

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY ORIGINAL JURISDICTION

PIL/ WRIT PETITION (CIVIL) NO. OF 2012

IN THE MATTER OF: -

Justice K.S. Puttaswamy (Retd.) & Anr.Petitioners

Versus

Union of India & Ors. ...Respondents

I.A. No. of 2012 WITH
An Application for interim Relief/ Stay

[PAPERBOOK]

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ADVOCATE FOR THE PETITIONERS: ANISH KUMAR GUPTA

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LISTING PROFORMA IN THE SUPREME COURT OF INDIA

1. Nature of the Matter CIVIL
2. Name(s) of Petitioner(s) Appellant(s) Justice K.S. Puttaswamy (Retd.) & Anr.
(b) email ID Not Applicable
3. Name(s) of Respondent(s) Union of India & Others
(b) email ID Not applicable
4. Number of the case Writ Petition (C) No. _____ of 2012
5. Advocate for Petitioner(s)/Appellant(s) ANISH KUMAR GUPTA
(b) email ID anish1973@rediffmail.com
6. Advocate for Respondent(s) Not Applicable
(b) email ID Not Applicable
7. Section dealing with the matter PIL
8. Date of the impugned Order/Judgment Not Applicable
- 8A. Name of Hon'ble Judges Not Applicable
- 8B. In Land Acquisition Matters:-
(i) Notification /Govt. Order No.(u/s 4, 6)
Dated _____ issued by Centre/ State of _____ Not Applicable
(ii) Exact purpose of acquisition & village involved Not Applicable
- 8C. In Civil Matters:- Not Applicable
(i) Suit No. _____ Name of Lower Court: _____
Date of Judgment: _____
- 8D. In Writ Petitions:-
"Catchword" of other similar matters – Not applicable
- 8E. In case of Motor Vehicle Accident Matters:- Not Applicable
Vehicle No. _____
- 8F. In Service Matters
(i) Relevant service rule, if any Not Applicable
(ii) G.O./Circular/Notification, if applicable or in question Not Applicable
9. Nature of Urgency URGENT
10. In case it is a Tax Matter:
(a) Tax amount involved in the matter Not applicable
(b) Whether a reference statement of the case was called for or rejected Not Applicable
(c) Whether similar tax matters of same parties filed earlier (may be for earlier/other Assessment year)? NA
(d) Exemption Notification/Circular No. Not Applicable
11. Valuation of the matter Not Applicable
12. Classification of the matter:
(Please fill up the number & name of relevant category with sub category as per the list circulated.)
No. of Subject Category with full name 08 Letter Petition & PIL Matters
No. of sub-category with full name 0812 Others

13. Title of the Act Involved (Center/State) Constitution of India, 1950
14. (a) Sub-Classification (indicate Section/Article of the statute) Article 73
 (b) Sub-Section involved Not Applicable
 (c) Title of the Rules involved (Center/State) Not Applicable
 (d) Sub-classification (Indicate Rule/Sub-Rule of the statute) Not Applicable
15. Point of law and question of law raised in the case: Whether the executive power vested in the Union under Article 73 of the Constitution can be exercised by avoiding the consideration of a Bill on the same subject pending before the Parliament by it after its rejection by the Standing Committee for discussion for debate and thereby circumventing the Parliament?
16. Whether matter is not to be listed before any Hon'ble Judge? Not Applicable
 Mention the name of the Hon'ble Judge
17. Particulars of identical/similar cases, if any
 (a) Pending cases Not Applicable
 (b) Decided cases with citation Not Applicable
- 17A. Was S.L.P./Appeal/Writ filed against same impugned Judgment/Order earlier? If yes, particulars No
18. Whether the petition is against interlocutory/final order/decreed in the case Not Applicable
19. If it is a fresh matter, please state the name of the High Court and the Coram in the Impugned Judgment/Order
 Not Applicable
20. If the matter was already listed in the Court:
 a) When was it listed? Not Applicable
 b) What was the Coram? Not Applicable
 c) What was the direction of the Court. Not Applicable
21. Whether a date was has already been fixed either by Court or on being mentioned, for the hearing of matter? If so, please indicate the date fixed Not Applicable
22. Is there a Caveator? If so, whether a notice has been issued to him? Not Applicable
23. Whether date entered in the Computer? Not Applicable
24. If it is a criminal matter, please state: Not Applicable
 (a) Whether accused has surrendered Not Applicable
 (b) Nature of Offence, i.e., Convicted under Section with Act Not Applicable
 (c) Sentence awarded Not Applicable
 (d) Sentence already undergone by the accused Not Applicable
- 24 (e) (i) FIR /RC/etc.
 Date of Registration of FIR etc. Not Applicable
 Name & place of the Police Station. Not Applicable
 (ii) Name & place of Trial Court Not Applicable
 Case No. in Trial Court and Date of Judgment Not Applicable
 (iii) Name & Place of 1st Appellate Court Not Applicable
 Case No. in 1st Appellate Court & date of Judgment Not Applicable

Date : 18/10/2012

[ANISH KUMAR GUPTA]
 Advocate for the Petitioner
 Code: 1529

SYNOPSIS & LIST OF DATES & EVENTS

The instant Public Interest Petition is being filed under Article 32 of the Constitution of India having regard to the fact that fundamental rights of the innumerable citizens of India namely Right to Privacy falling under Article 21 of the Constitution of India are adversely affected by the Executive action of the Central Government proceeding to implement an executive order dated 28.01.2009 and thereby issuing Aadhar numbers to both citizens as also illegal immigrants presently illegally residing in the Country, while the Bill namely "National Identification Authority of India Bill, 2010 [hereafter Shortly referred to as the Bill], though the Bill has already been introduced in the Rajya Sabha on 03.12.2010 and the matter was referred to the Standing Committee, Finance and the said committee by overwhelming majority has rejected the Bill by its decision dated 11.12.2011.

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The instant petition raises the following importing questions of law relating to the interpretation of the Constitution namely:

- a) Whether the Union Government by the exercise of its executive power under Article 73 of the Constitution formulate a scheme which adversely affect the fundamental rights of the citizens and implement it without there being an act of Parliament or getting passed an Act passed by the Parliament for that purpose? And in particular when a Bill for the same purpose is pending before the Parliament and the relevant Standing Committee has rejected the Bill in its report?
- b) Whether the executive power vested in the Union under Article 73 of the Constitution can be exercised by avoiding the consideration of a Bill on the same subject pending before the Parliament by it after its rejection by the Standing Committee for discussion for debate and thereby circumventing the Parliament?

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The petitioners herein are citizen of India and the petitioner no. 1 was a Judge of the Karnataka High Court since 1977 November and after retirement he was Vice Chairman of Central Administrative Tribunal, Bangalore Bench, Bangalore and subsequently he was Chairman of Andhra Pradesh Administrative Tribunal, Hyderabad and also Chairman, Andhra Pradesh Backward Class Commission. He is keenly interested in ensuring that the constitutional provisions are strictly adhered to by the Central Government and the fundamental rights of the citizens are not violated.

The Petitioner No. 2 is an advocate by profession and is the General Secretary of Forum for Integrated National Security (NCR Chapter), an organisation dedicated to the internal, external and border security of India with the motive that the security of India is not only the concern of the armed forces but the citizens as well. The petitioner No. 2 is also All India Secretary of the Indian Federation of

United Nations Association (affiliated to World Federation of U.N. Association, Geneva).

Both the petitioners are further deeply interested in ensuring that the executive and legislature function within the frame work of the Constitutional provisions and the former does not circumvent the legislature to wit avoid discussion, debate and voting in the Parliament and thereby render the legislature redundant or purposeless.

28.01.2009

The Government of India issued a Notification whereby establishing Unique Identification Authority of India for issuance of Aadhar numbers and cards to all the Citizen of India by an executive order.

03.12.2010

Having regard to the necessity of legislation for the constitution of a statutory authority like the Unique Identification Authority of India and also having regard to the necessity of law enacted by Parliament for the implementation of the scheme approved by the Government under notification dated 28.01.2009, a Bill

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entitled National Identification Authority of India Bill, 2010 was introduced in the Rajya Sabha on 03.12.2010.

The aforesaid Bill was referred to the Standing Committee, Finance for consideration, having regard to the procedure followed by the Parliament.

In the circumstances, at the instance of the petitioner, a member of Parliament, Rajya Sabha, M. Rama Jois, addressed a letter to the Prime Minister in this regard on 19.01.2011 pointing out to the constitutional impropriety of issuing Aadhar Numbers even when the Bill aforesaid was pending before the parliament.

Surprisingly, to the said letter, he received a reply dated 29.01.2011 simply stating that the Prime Minister has received his letter without replying to the points raised in his letter.

In the circumstances, M. Rama is, Member of Parliament, Rajya Sabha made a special mention on 15.03.2011 pointing out that implementing executive order tantamount to

circumventing the Parliament by the executive.

It is submitted that all the members of the Standing Committee, Finance, consisting of 33 members of Parliament considered the matter in great detail. Before the Committee there were several representations made by various persons about the undesirability and adverse affect of the provisions of the Bill and also for the reason that the project involved enormous expenditure.

13.12.2011

The Standing committee, Finance considered the matter thoroughly and for the reasons recorded therein rejected the Bill.

Relevant part of the Report reads:

"4. The committee regret to observe that despite the presence of serious difference of opinion within the Government on the UID Scheme as Illustrate below, the scheme continues to be implemented in an overbearing manner without regard to legalities and other social consequences:-

- i. The Ministry of Finance (Department of Expenditure) have expressed concern that

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lack of coordination is leading to duplication of efforts and expenditure among at least six agencies collecting information (NPR, MGNREGS, BPL census, UIDAI, RSBY and Bank Smart Cards),

- ii. The Ministry of Home Affairs are stated to have raised serious security concern over the efficacy of introducer system, involvement of private agencies in a large scale in the scheme which may become a threat to national security, uncertainties in the UIDAI's revenue model;
- iii. The National Informatics Centre (NIC) have pointed out that the issues relating to privacy and security of UID data could be better handled by strong in a Government data centre;
- iv. The Ministry of Planning have expressed reservation over the merits and functioning of the UIDAI; and the necessity of collection of iris image;
- v. Involvement of several nodal appraising agencies which may work at cross purpose; and

vi. Several Government agencies are collecting biometric(s) information in the name of different schemes."

In view of the afore-mentioned concerns and apprehensions about the UID Scheme, particularly considering the contradictions and ambiguities within the Government on its implementation as well as implications, the Committee categorically convey their unacceptability of the National Identification Authority of India Bill 2010 in its present form. The data already collected by the UIDAI may be transferred to the National Population Register (NPR), if the Government so chooses. The Committee would, thus, urge the Government to reconsider and review the UID scheme as also the proposals contained in the Bill in all its ramifications and bring forth a fresh legislation before Parliament.

February, 2012 After the Standing committee submitted its report on 13.12.2011, enrolment of Aadhar Number which could be given under Section 3 of the Act after the Bill became an Act of parliament and came into force, stopped the

issue of Aadhar numbers in or about February 2012.

15.08.2012

Despite the fact that the Bill is pending before the Rajya Sabha, and further that the Standing Committee, Finance has submitted its report rejecting the Bill, the Government of India is proceeding to implement the Bill in purported exercise of executive power. However, again on 15.08.2012, it is notified in the Hindu paper that second phase of enrolment is being started.

It is in these circumstances, the petitioners are constrained to present this Petition under Article 32 of the Constitution of India seeking to prevent the Government to act upon the notification dated 28.01.2009 any further by-passing or circumventing the passing of the Bill by Parliament after discussion and debate and voting. Though the power of the Executive under Article 73 of the Constitution is Co-extensive with that of the Legislative power in that the area of operation of the legislative power and that of the executive power is equal, still the important question

which arises in the context of the facts stated above is that

a. Whether any scheme which is going to adversely affect the fundamental rights of citizens can be done only by law made by legislature and in the word 'law' in article 21 means only law enacted by legislature and not any executive order and

b. Whether the executive can exercise its power in such a manner so as to circumvent the parliament by avoiding discussion and debate and getting the approval of the Parliament and to proceed to implement the very matter which has been the subject matter of the Bill pending before the Rajya Sabha and render the Bill and the Parliament in-effective and purposeless.

18.10.2012

Hence, this writ petition in the nature of PIL is being filed by the petitioners herein.

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY ORIGINAL JURISDICTION

PIL/ WRIT PETITION (CIVIL) NO. /2012

IN THE MATTER OF: -

1. Justice K.S. Puttaswamy (Retd.)

S/o Late Suryanarayanappa

Aged about 86 years

R/o No. 6, Park Area,

9th Cross, Wilson Garden,

Bangalore – 560 027

2. Mr. Parvesh Khanna, Advocate

General Secretary,

Forum for Integrated National Security

All India Secretary,

Indian Federation of United Nations Association

(affiliated to World Federation of U.N. Association,

Geneva)

S/o Late L.N. Khanna,

R/o Flat No. 19, 5th Floor,

Dakshineshwar,

10, Hailey Road, New Delhi - 110001.

PETITIONERS

VERSUS

1. Union of India through

Principal Secretary,

Ministry of Finance,

Central Secretariat,

North Block, New Delhi.

2. Planning Commission

Government of India,

Through its Secretary

Yojana Bhawan,

Sansad Marg, New Delhi-110001

3. Unique Identification Authority

of India [UIDAI] Planning Commission,

Government of India,

3rd Floor, Tower II,

Jeevan Bharati Building,

Connaught Circus,

New Delhi-110001.

.... RESPONDENTS

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE SUPREME COURT OF
INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWTH: -

1. That the instant Public Interest Petition is being filed under Article 32 of the Constitution of India having regard to the fact that fundamental rights of the innumerable citizens of India namely Right to Privacy falling under Article 21 of the Constitution of India are adversely affected by the Executive action of the Central Government proceeding to implement an executive order dated 28.01.2009 and thereby issuing Aadhar numbers to both citizens as also illegal immigrants presently illegally residing in the Country, while the Bill namely "National Identification Authority of India Bill, 2010 [hereafter Shortly referred to as the Bill], though the Bill has already been introduced in the Rajya Sabha on 03.12.2010 and the matter was referred to the Standing Committee, Finance and the said committee by overwhelming majority has rejected the Bill by its decision dated 11.12.2011.
2. That the instant petition raises the following importing questions of law relating to the interpretation of the Constitution namely:
 - a) Whether the Union Government by the exercise of its executive power under Article 73 of the Constitution formulate a scheme which adversely affect the fundamental rights of the citizens and implement it

without there being an act of Parliament or getting passed an Act passed by the Parliament for that purpose? And in particular when a Bill for the same purpose is pending before the Parliament and the relevant Standing Committee has rejected the Bill in its report?

- b) Whether the executive power vested in the Union under Article 73 of the Constitution can be exercised by avoiding the consideration of a Bill on the same subject pending before the Parliament by it after its rejection by the Standing Committee for discussion for debate and thereby circumventing the Parliament?

3. That petitioners herein are citizen of India and the petitioner no. 1 was a Judge of the Karnataka High Court since 1977 November and after retirement he was Vice Chairman of Central Administrative Tribunal, Bangalore Bench, Bangalore and subsequently he was Chairman of Andhra Pradesh Administrative Tribunal, Hyderabad and also Chairman, Andhra Pradesh Backward Class Commission. He is keenly interested in ensuring that the constitutional provisions are strictly adhered to by the Central Government and the fundamental rights of the citizens are not violated.

4. That the Petitioner No. 2 is an advocate by profession and is the General Secretary of Forum for Integrated National Security (NCR Chapter), an organisation dedicated to the internal, external and border security of India with the motive that the security of India is not only the concern of the armed forces but the citizens as well. The petitioner No. 2 is also All India Secretary of the Indian Federation of United Nations Association (affiliated to World Federation of U.N. Association, Geneva).
5. That both the petitioners are further deeply interested in ensuring that the executive and legislature function within the frame work of the Constitutional provisions and the former does not circumvent the legislature to wit avoid discussion, debate and voting in the Parliament and thereby render the legislature redundant or purposeless.
6. That the petitioners have ascertained that the project known as Unique Identification Number Project under which identification number was proposed to be given not only to all the citizens of the country but also to all residents who are illegal immigrants pursuant to a scheme formulated by the Government of India through an executive order dated 28th January 2009. In this order, the Central Government in

exercise of its executive power constituted UNIQUE IDENTIFICATION AUTHORITY OF INDIA authorizing it to issue Unique Identification Number to all the citizens of India as also to residents who are not citizens was also furnished. Annexure-1 to the said notification contained responsibility of the Authority to lay down plan and policies to implement the said scheme. **ANNEXED AND MARKED AS ANNEXURE P-1** is the true copy of the said notification dated 28.01.2009. (Page 30 to 34).

7. That having regard to the necessity of legislation for the constitution of a statutory authority like the Unique Identification Authority of India and also having regard to the necessity of law enacted by Parliament for the implementation of the scheme approved by the Government under notification dated 28.01.2009, a Bill entitled National Identification Authority of India Bill, 2010 was introduced in the Rajya Sabha on 03.12.2010 and the same was referred to the Standing Committee, Finance for consideration, having regard to the procedure followed by the Parliament. **ANNEXED AND MARKED AS ANNEXURE "P-2"** is the true copy of the National Identification Authority of India Bill, 2010. (Page 35 to 54).

8. That Section 3 of the proposed Bill empowers the Authority to issue Aadhar Numbers obtaining of which is made necessary for obtaining various benefits from Governmental authorities, not only to all the citizens but also to illegal immigrants residing in India illegally. As a condition precedent for the issue of Aadhar Numbers the Authority is empowered to collect the following information in respect of the individuals concerned as has been published in the UIDAI Strategy Overview:

- Name
- Date of Birth
- Gender
- Father's/Husband's/Guardian/s name and UID [optional for adult residents]
- Mother's/Wife's/Guardian's name and UID [optional for audit residents]
- Introducer's name and UID [in case of lack of documents]
- Address
- All ten finger prints, photograph and both iris scans

ANNEXED AND MARKED AS ANNEXURE "P-3" is the true copy UIDAI Strategy Overview as published in April,

2010 by the Unique Identification Authority of India. (Page 55 to 64).

9. That if and when the above Bill is discussed, debated and passed by the majority in Rajya Sabha and thereafter introduced in the Lok Sabha and discussed, debated therein and passed by majority therein and thereafter It secures the assent of the President and published in the official Gazette of India and a date for its commencement is fixed, the Bill becomes an Act of Parliament. It is only thereafter unique identification authority becomes a statutory authority and Aadhar Numbers could be given in terms of Sub-section (2) of Section 3 of the Act.
10. That surprisingly, even after the above Bill was introduced in the Rajya Sabha the same had been referred to the standing Committee, Finance, consisting of 33 members of Parliament for its consideration and report the Government of India proceeded to implement its executive order dated 28.01.2009, which involved not only colossal expenditure but also as a condition precedent for the issue off Aadhar numbers, biometric information of every individual which adversely affect his right to privacy under Article 21 has to be furnished. Such a provision which is an invasion of the

fundamental rights of citizens which could only be done by legislation and only by a statutory authority appointed by Legislation for the said purpose is being implemented which involves enormous expenditure as can be seen from the report of the Standing Committee referred to later.

11. That in the circumstances, at the instance of the petitioner, a member of Parliament, Rajya Sabha, M. Rama Jois, addressed a letter to the Prime Minister in this regard on 19.01.2011 pointing out to the constitutional impropriety of issuing Aadhar Numbers even when the Bill aforesaid was pending before the parliament. **ANNEXED AND MARKED AS ANNEXURE "P-4"** is the true copy of letter dated 19.01.2011. (Page 65 to 65).

Surprisingly, to the said letter, he received a reply dated 29.01.2011 simply stating that the Prime Minister has received his letter without replying to the points raised in his letter. **ANNEXED AND MARKED AS ANNEXURE "P-5"** is the true copy of the reply dated 29.01.2011. (Page 66 to 67).

In the circumstances, M. Rama is, Member of Parliament, Rajya Sabha made a special mention on 15.03.2011 pointing out that implementing executive order tantamount to circumventing the Parliament by the

executive. **ANNEXED AND MARKED AS ANNEXURE "P-6"** is the true copy of the said Special Mention made by Mr. M. Rama Jois, in the upper house of the Parliament dated 15.03.2011. (Page 68 to 70).

12. That the petitioners state that all the members of the Standing Committee, Finance, consisting of 33 members of Parliament considered the matter in great detail. Before the Committee there were several representations made by various persons about the undesirability and adverse affect of the provisions of the Bill and also for the reason that the project involved enormous expenditure.

13. That the Standing committee, Finance considered the matter thoroughly and for the reasons recorded therein rejected the Bill. A copy of the report which speaks in great detail about the undesirability of the executive proceeding to implement the Scheme without any regard to its pendency before the Parliament is being filed herewith.

ANNEXED AND MARKED AS ANNEXURE "P-7" is the true copy report of the Standing Committee on Finance presented on 13.12.2011. (Page 71 to 106).

Relevant part of the Report reads:

"4. The committee regret to observe that despite the presence of serious difference of opinion within the Government on the UID Scheme as Illustrate below, the scheme continues to be implemented in an overbearing manner without regard to legalities and other social consequences:-

- i. The Ministry of Finance (Department of Expenditure) have expressed concern that lack of coordination is leading to duplication of efforts and expenditure among at least six agencies collecting information (NPR, MGNREGS, BPL census, UIDAI, RSBY and Bank Smart Cards),
- ii. The Ministry of Home Affairs are stated to have raised serious security concern over the efficacy of introducer system, involvement of private agencies in a large scale in the scheme which may become a threat to national security, uncertainties in the UIDAI's revenue model;
- iii. The National Informatics Centre (NIC) have pointed out that the issues relating to privacy and security of UID data could be better handled by strong in a Government data centre:

- iv. The Ministry of Planning have expressed reservation over the merits and functioning of the UIDAI; and the necessity of collection of iris image;
- v. Involvement of several nodal appraising agencies which may work at cross purpose; and
- vi. Several Government agencies are collecting biometric(s) information in the name of different schemes."

14. That in view of the afore-mentioned concerns and apprehensions about the UID Scheme, particularly considering the contradictions and ambiguities within the Government on its implementation as well as implications, the Committee categorically convey their unacceptability of the National Identification Authority of India Bill 2010 in its present form. The data already collected by the UIDAI may be transferred to the National Population Register (NPR), if the Government so chooses. The Committee would, thus, urge the Government to reconsider and review the UID scheme as also the proposals contained in the Bill in all its ramifications and bring forth a fresh legislation before Parliament.

15. That immediately after the Standing committee submitted its report on 11.12.2011, enrolment of Aadhar Number which could be given under Section 3 of the Act after the Bill became an Act of parliament and came into force, stopped the issue of Aadhar numbers in or about February 2012. However, again on 15.08.2012, it is notified in the Hindu paper that second phase of enrolment is being started. **ANNEXED AND MARKED AS ANNEXURE "P-8"** is the true copy notification dated 15.08.2012 as published in "The Hindu" news paper. (Page 107 to 107).
16. That despite the fact that the Bill is pending before the Rajya Sabha, and further that the Standing Committee, Finance has submitted its report rejecting the Bill, the Government of India is proceeding to implement the Bill in purported exercise of executive power.
17. That it is in these circumstances, the petitioner is constrained to present this Petition under Article 32 of the Constitution of India seeking to prevent the Government to do so, bye-passing or circumventing the passing of the Bill by Parliament after discussion and debate and voting. Important questions relating to interpretation of the relevant provisions of the Constitution as to the extent and contour

of executive power as set out in the second paragraph arise for consideration.

18. That before the Standing Committee, the stand taken by the Central Government has been that as the executive power of the Central Government under Article 73 of the Constitution is co-extensive with that of legislative power, executive is at liberty to proceed to exercise the executive power for implementing the entire scheme notwithstanding the fact that the Bill is pending before the Rajya Sabha and that until it becomes the Law, executive can do which can be done by Legislature by Legislation.

19. That the petitioner states that though the power of the Executive under Article 73 of the Constitution is Co-extensive with that of the Legislative power in that the area of operation of the legislative power and that of the executive power is equal, still the important question which arises in the context of the facts stated above is that

- a. Whether any scheme which is going to adversely affect the fundamental rights of citizens can be done only by law made by legislature and in the word law in article 21 means only law enacted by legislature and not any executive order and

b. Whether the executive can exercise its power in such a manner so as to circumvent the parliament by avoiding discussion and debate and getting the approval of the Parliament and to proceed to implement the very matter which has been the subject matter of the Bill pending before the Rajya Sabha and render the Bill and the Parliament ineffective and purposeless.

20. That further in support of the submission of the petitioner that any law which adversely affect the fundamental right of citizens, it could be only by legislation, they rely on the constitution bench judgment of this Hon'ble Court in the case of Mohd. Yasin Vs. Town Area Committee, Jalalabad, AIR 1952 SC 115, in which this Hon'ble Court held that it is only by a valid law restriction on fundamental rights could be imposed and not by a bye-law of Municipality. Relevant portion at page 118 reads:

'Therefore, the bye laws cannot be said to constitute a valid law which alone may, under Art. 19(6) of the Constitution of India, impose a restriction on the right conferred by Art. 19(1)(g). In the absence of any valid law authorising it, such illegal imposition must undoubtedly

operate as an illegal imposition and must infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which is guaranteed to him by Art. 19(1)(g) of our constitution". The petitioner also rely on another constitution Bench judgment of this Hon'ble Court in Kharak Singh Vs. State of U.P., AIR 1963 WSC 1295. Relevant Portion reads:-

"We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that "personal liberty" is used in the Article as a compendious term to include within itself all the verities of rights which go to make up the personal liberties of man other than those dealt with in the several clauses of Art. 19(1). In other words, while Art. 19(1) deals with particular species or attributes of that freedom, "personal liberty" in Art. 21 takes in and comprises the residue."

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"In our view cl. (b) of Regulation 236 is plainly violative of Art. 21 and as there is no "Law" on which the same could be justified it must be struck down as unconstitutional".

21. In support of the submission of the petitioner that the right to privacy is part of fundamental right under Article 21, they rely on the following decision of this Hon'ble Court:

[a] R. Raja Gopal Vs. State of T.N., 1994 (6) SCC 632

[b] District Registrar Vs. Canara Bank, 2005(1) SCC 496

[c] Peoples' Union for Civil Liberties Vs. Union of India, 1997(1) SCC 301

22. That the petitioner states that collecting Biometric information as a condition precedent for the issue of Aadhar number is an invasion of the right to privacy of citizens and therefore this can be done only by the law enacted by the Parliament and beyond the executive power.

23. That in this petition, the petitioner is confirming to the questions set out in paragraph-2 above namely what is the contours of the executive powers of the Central Government under Article 73 and whether the executive power vested in the Union can be exercised so as to adversely affect the fundamental right to privacy and in a manner so as to bye-pass the legislative power of the

Parliament? And render the Bill Purposeless. The petitioners are constrained to state that the subject matter involved in the Bill is of serious consequences to the right to privacy of the citizens of the Country and also right to secrecy of their personal matter and involves colossal expenditure to the Union.

24. That the petitioner makes it clear that they are not seeking judicial review by this Hon'ble Court regarding the propriety of the scheme incorporated in the Bill, but they are only requesting this Hon'ble Court to interpret the scope and ambit of executive power under the scheme of the Constitution and as to whether the executive power could be used in a manner so as to make the legislative power redundant or in other words, whether by the exercise of executive power, the executive can circumvent the Parliament? However, having regard to the far reaching importance of the matter which is highly controversial and involves colossal expenditure, which is sure to become a waste if and when the Parliament rejects the Bill, or for any reason the scheme becomes impracticable rendering the enormous money spent till then a National Waste, the petitioners are producing some of the articles published

highlighting the serious consequences of the project that will ensue to the Nation by implementation of the project.

25. That ADHAAR is being issued without any proper verification by the private companies whose main object is to make money by issuing more cards. They are issuing cards even on the basis of an affidavit. After the activity is legislated, it will be difficult to remove/re-verify such database.

26. That for an overview of the matter, the petitioners are producing some of the Articles published in various news papers and magazines questioning the validity of the AADHAR/ UIDAI: -.

- (i) An article by R. Ram Kumar, Associate Professor, Tata Institute of Social Sciences, Mumbai Published in the Hindu on 7th July 2011 in which the provisions of the Bill have been analyzed and pointed out that similar attempt made in the United Kingdom had failed.

ANNEXED AND MARKED AS ANNEXURE "P-9" is the true copy article of R. Ram Kumar, as published in "The Hindu", on 07.07.2011. (Page 108 to 109).

- (ii) An article titled "An appeal to parliamentarians – Reasons why you should oppose the UID Bill, by "A

Campaign for No UID', c/o Indian Social Action Forum [INSAF], New Delhi. **ANNEXED AND MARKED AS ANNEXURE "P-10"** is the true copy the Article "An appeal to parliamentarians – Reasons why you should oppose the UID Bill, by "A Campaign for No UID', c/o Indian Social Action Forum [INSAF], New Delhi. (Page 110 to 113).

(iii) An enlightening article on the topic by Praful Bidwai, as published in the FRONTLINE, June Issue. **ANNEXED AND MARKED AS ANNEXURE "P-11"** is the true copy the Article by Praful Bidwai as published in FRONTLINE. (Page 114 to 121).

(iv) An article entitled "ID cards are the ultimate identity theft" published in Times on 07.03.2008. **ANNEXED AND MARKED AS ANNEXURE "P-12"** is the true copy the Article "ID cards are the ultimate identity theft" published in Times on 07.03.2008. (Page 122 to 123).

(v) A summary, titled "The Identity Project – Executive Summary (London School of Economics Study 2005). **ANNEXED AND MARKED AS ANNEXURE "P-13"** is the true copy of the "The Identity Project – Executive Summary (London School of Economics Study 2005). (Page 124 to 125).

(vi) An exhaustive Article on the topic "AADHAR- NIA BILL 2010" by V.K. Somasekhar, Published in the magazine Spade A Spade of February 2012. **ANNEXED AND MARKED AS ANNEXURE "P-14"** is the true copy of the "AADHAR- NIA BILL 2010" by V.K. Somasekhar, Published in the magazine Spade A Spade of February 2012. (Page 126 to 131).

(vii) An Article titled "Identity Concerns" by R. Ramkumar as published in FRONTLINE November 19- December 02, 2011 issue. **ANNEXED AND MARKED AS ANNEXURE "P-15"** is the true copy of Article titled "Identity Concerns" by R. Ramkumar as published in FRONTLINE November 19- December 02, 2011 issue. (Page 132 to 138).

27. That the Petitioner states that there is another serious matter which emerges on a comparison between Section 14-A of the Indian Citizenship Act and the provisions of the Bill. Section 14-A of the Indian Citizenship Act reads:-

14-A: Issue of National Identity Card; (1) The Central Government may compulsorily register every citizen of India and issue national identity card to him.

[2] The Central Government may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority.

[3] On and from the date of commencement of the Citizenship (Amendment) Act, 2003, the Registrar General, India, appointed under Sub-section 91) of Section 3 of the Registration of Births and Death Act, 1969 (18 of 1969) Shall act as the National Registration Authority and he shall function as the Registrar General of Citizen Registration.

[4] The central Government may appoint such other officers and staff as may be required to assist the Registrar General of Citizens Registration in discharging his functions and responsibilities.

[5] The procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed.

28. The above section provides for compulsory registration of every citizens of India and the issue of National Identification number to them. It is a whole some provision in order to distinguish between the citizens and others in

the Country who are not citizens of India and it is also an important document to be possessed by every bonafide citizen of this Country. As against Section 14-A of the Indian Citizenship Act, Section 3 of the Bill reads:-

[3] (1) Every citizen shall be entitled to obtain an Aadhaar number on providing of his demographic information and biometric information to the Authority in such manner as may be specified by regulations:-

Provided that the Central Government may, from time to time, notify such other category of individuals who may be entitled to obtain an aadhar number.

(2) On receipt of the demographic information and biometric information under sub-section 91), Authority shall, after verifying the information, in such manner as may be specified by regulations, issue an aadhaar number to such resident.

29. That on a comparison of the two, it shows that whereas Section 14-A of the Citizens Act provides for obtaining National Identity Card, the Bill provides that Aadhar Number be given subject to furnishing biometric details as stated above.

30. That it is significant to point out that once Aadhar number is issued under Section 3 of the Bill to a non citizen on the ground that he is residing in this Country, he becomes entitled to the fundamental rights guaranteed under Article 14 and 21 of the Constitution as fundamental rights under Article 14 and 21 are available to all persons in India and consequently also right to a remedy under Article 32 of the constitution of India.

31. That therefore, it is a matter of great security concern for the nation also. When such is the magnitude of the provisions of the Bill, still it is sought to be implemented by the exercise of executive power without any discussion, debate and the approval by both the Houses of the Parliament.

32. That the petitioners respectfully submit that the executive power notwithstanding the fact that the executive power is co-extensive with that of Legislature, it cannot be used to destroy or circumvent legislative power and any such use of executive power it is co-extensive with that of Legislature, it cannot be used to destroy or circumvent legislative power and any such use of executive power tantamount to a fraud on the constitution, for the same reason this Hon'ble Court

gave in the case of D.C. Wadhawa (1987 (1) SCC 378) that ordinance making power under the Constitution cannot be used to bye-pass the legislative power.

33. The petitioners respectfully state that they have not filed any other Writ Petition for the same purpose before this Hon'ble Court or before the Hon'ble Court.

GROUNDS

The petitioner urges the following grounds in support of the prayer:

- A. Because though the scheme formulated by the Central Government in its notification dated 28.01.2009 [Annexure "P-1"] in exercise of its executive power constituting Unique Identification Authority of India [UIDAI] and authorizing it to issue aadhaar numbers which adversely affect the fundamental right to privacy of citizens flowing from Article 21 of the constitution, cannot be implemented as the word 'law' in Article 21 means law made by the Legislature/Parliament, unless it becomes a law enacted by the Parliament, the respondents are proceedings to implement its executive order without bringing the Bill before the

Parliament for discussion, debate and passing which tantamounts to circumventing the Parliament and therefore unconstitutional, calling for interference at the hands of this Hon'ble Court.

B. Because though the National Identification Authority of India Bill, 2010 was introduced in the Rajya Sabha for the same purpose for which the executive order dated 28.01.2009 [Annexure "P-1"] was issued, and the same had been rejected by the Standing Committee, Finance [vide Annexure-"P-7"] to which it was referred, still the respondents are implementing the executive order [Annexure-I] without bringing the Bill for consideration before the Parliament for purpose of discussion, debate and passing by it and before it became an Act of parliament which is wholly unconstitutional and therefore liable to be prevented by issue of an appropriate writ by this Hon'ble Court.

C. Because ADHAAR is being issued without any proper verification by the private companies whose main object is to make money by issuing more cards. They are issuing cards even on the basis of an affidavit.

After the activity is legislated, it will be difficult to remove/re-verify such database.

PRAYER

The Petitioner respectfully prays that this Hon'ble Court may be pleased to:

(A) ISSUE a writ in the nature of mandamus restraining the respondents from issuing Aadhaar Numbers by way of implementing its executive order dated 28.01.2009 [Annexure "P-1"] which tantamount to implementing the provisions of the National Identification Authority of India Bill, 2010 pending before the Parliament until and unless the said Bill is considered and passed by the parliament and becomes an Act of parliament.

(B) Pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS AS THE PETITIONER IS DUTY BOUND SHALL EVER PRAY.

NEW DELHI

DRAWN AND FILED BY

DRAWN ON: 17.10.2012

FILED ON: 18.10.2012

[ANISH KUMAR GUPTA]

Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY ORIGINAL JURISDICTION

PIL/ WRIT PETITION (CIVIL) NO. OF 2012

IN THE MATTER OF: -

Justice K.S. Puttaswamy (Retd.) & Anr.Petitioners

Versus

Union of India & Ors. ...Respondents

AFFIDAVIT

I, Parvesh Khanna S/o Late L.N. Khanna, aged 55 years
R/o Flat No. 19, 5th Floor, Dakshineshwar, 10, Hailey Road,
New Delhi - 110001, do hereby solemnly state and affirm as
under: -

1. That I am the petitioner No. 2 in the above mentioned Writ
Petition in the nature of public interest litigation and as
such I am fully conversant with the facts and
circumstances of the case, deposed to herein below.
2. That the instant Writ Petition has been drafted by my
counsel on our instructions. I have gone through the copy
of the Writ Petition from para 1 to 33 and the grounds A to
C at page no. 1 to 27 and List of Dates & Events on page

nos. A to and I state that the contents thereof are true and correct.

3. That the Annexures are the true copies of their respective originals and are essential parts of the records.
4. That the contents of interlocutory applications filed along with the instant writ petition are true and correct to my knowledge and belief.

DEPONENT

VERIFICATION

I, Parvesh Khanna, the deponent do hereby verify that the contents of this affidavit from para 1 to 4 are true and correct to best of my knowledge and belief and nothing material has been concealed.

Verified at New Delhi dated this the 18th day of October, 2012.

DEPONENT

ANNEXURE "P-1"

(TO BE PUBLISHED IN PART -I, SECTION-2 OF THE
GAZETTEE OF INDIA)

GOVERNMENT OF INDIA PLANNING COMMISSION

Yojana Bhawan Sansad Marg,

New Delhi, 28th January, 2009

NOTIFICATION

No. A-43011/02/2009-Admn.I: In pursuance of Empowered Group of Ministers' fourth meeting, dated 4th November 2008, the Unique identification Authority of India (UIDAI) is hereby constituted and ratified as an attached office under aegis of Planning Commission with following terms of reference and initial core staff composition:-

COMPOSITION:

2. UIDAI shall be set up with an initial core team of 115 officials and staff as per details given below:

Post	Level	No. of Posts
UID Authority of India		
Director General & Mission Director	Additional Secretary Govt. of India	1
Deputy Director	Joint Secretary,	1

General (DDG)	Govt. of India	
Assistant Director General (ADG)	Director, Govt. of India	1
Support staff		
PS	PS	3
Peon	Peon	2
Driver	Driver	2
Total Manpower		10
State/UT Units of UIDAI		
State/UT UID Commissioner	Joint Secretary, Govt. of India	35
Support Staff		
PS	PS	35
Peon	Peon	35
Total Manpower		105
Grand Total		115

Annexure 1

Role and Responsibilities of UIDAI

3. UIDAI shall have the responsibility to lay down plan and policies to implement UID Scheme, shall own and operate UID database and be responsible for its updation and maintenance on an ongoing basis.
4. Implementation of UID scheme will entail, inter alia, following responsibilities being undertaken by UIDAI:
 - Generate and assign UID to residents
 - Define mechanisms and process for interlinking UID with partner databases on a continuous basis
 - Frame Policies and administrative procedures related to updation mechanism and maintenance of UID database on an ongoing basis
 - Co-ordinate/ Liaise with implementation partners and users agencies as also define conflict resolution mechanism
 - Define usage and applicability of UID for delivery of various services
 - Operate and manage all stage of UID LIFECCLE
 - Adopt phased approach for implementation of UID specially with reference to approved timelines

- Take necessary steps to ensure collation of NPR with UID (as per approved strategy)
 - Ensure ways for leveraging field level institutions appropriately such as PRIs in establishing linkages across partner agencies as well as its validation while cross linking with other designated agencies
 - Evolve strategy for awareness and communication of UID and its usage
 - Identify new partner/ user agencies
 - Issue necessary instructions to agencies that undertake creation of databases, to ensure standardization of data elements that are elected and digitized and enable collation and correlation with UID and its partner databases
 - Frame Policies and administrative procedures related to hiring/ retention / mobilization of resources, outsourcing of various tasks and budgeting & planning for UIDAI and all State units under UIDAI.
5. Planning commission shall be the nodal agency for UIDAI for providing logistics, planning and budgetary support. Planning commission would provide initial office and IT infrastructure at Central level.

6. Government housing will be provided to officers of UIDAI appointed on deputation from general pool of Department of Urban Development.

(Dr. Subas Pani)
Secretary to the Government of India

[TRUE COPY]

ANNEXURE "P-2"

TO BE INTRODUCED IN THE RAJYA SABHA

Bill No. LXXV of 2010

THE NATIONAL IDENTIFICATION AUTHORITY OF INDIA BILL, 2010

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

AADHAAR NUMBERS

3. Aadhaar number.
4. Properties of aadhaar number.
5. Authentication of aadhaar number.
6. Aadhaar number not evidence of citizenship or domicile, etc.
7. Central Identities Data Repository.
8. Updation of certain information.
9. Prohibition on requiring certain information.
10. Special measures for issuance of aadhaar number to certain categories of persons.

CHAPTER III

NATIONAL IDENTIFICATION AUTHORITY OF INDIA

11. Establishment of Authority.
12. Composition of Authority.
13. Qualifications for appointment of Chairperson and Members of Authority.
14. Term of office and other conditions of service of Chairperson and Members.
15. Removal of Chairperson and Members.
16. Restrictions on Chairperson or Members on employment after cessation of office.
17. Functions of Chairperson.
18. Meetings.
19. Vacancies, etc. not to invalidate proceedings of Authority.
20. Officers and other employees of Authority.
21. Functions of chief executive officer of Authority.
22. Transfer of assets, liabilities of Authority.
23. Powers and functions of Authority.

CHAPTER IV

GRANTS, ACCOUNTS AND AUDIT AND ANNUAL REPORT

24. Grants by Central Government.
25. Other fees and revenue.
26. Accounts and audit.
27. Returns and annual report, etc.

(ii)

CHAPTER V

IDENTITY REVIEW COMMITTEE

CLAUSES

28. Review Committee.
29. Functions of Review Committee.

CHAPTER VI

PROTECTION OF INFORMATION

30. Security and confidentiality of information.
31. Alteration of demographic information or biometric information.
32. Access to own information and records of requests for authentication.
33. Disclosure of information in certain cases.

CHAPTER VII

OFFENCES AND PENALTIES

34. Penalty for impersonation at time of enrolment.
35. Penalty for impersonation of aadhaar number holder by changing demographic information or biometric information.
36. Penalty for impersonation.
37. Penalty for disclosing identity information.
38. Penalty for unauthorised access to the Central Identities Data Repository.
39. Penalty for tampering with data in Central Identities Data Repository.
40. Penalty for manipulating biometric information.
41. General penalty.
42. Offences by companies.
43. Act to apply for offence or contravention committed outside India.
44. Power to investigate offences.
45. Penalties not to interfere with other punishments.
46. Cognizance of offences.

CHAPTER VIII

MISCELLANEOUS

47. Power of Central Government to supersede Authority.
48. Members, officers, etc., to be public servants.
49. Power of Central Government to issue directions.
50. Delegation.
51. Protection of action taken in good faith.
52. Power of Central Government to make rules.
53. Power of Authority to make regulations.
54. Laying of rules and regulations before Parliament.
55. Application of other laws not barred.
56. Power to remove difficulties.
57. Savings.

Bill No. LXXV of 2010

THE NATIONAL IDENTIFICATION AUTHORITY OF INDIA
BILL, 2010

A

BILL

to provide for the establishment of the National Identification Authority of India for the purpose of issuing identification numbers to individuals residing in India and to certain other classes of individuals and manner of authentication of such individuals to facilitate access to benefits and services to such individuals to which they are entitled and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the National Identification Authority of India Act, 2010.
5 (2) It shall extend to the whole of India except the State of Jammu and Kashmir and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

Short title,
extent and
commencement.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "aadhaar number" means the identification number issued to an individual under sub-section (2) of section 3;

(b) "aadhaar number holder" means an individual who has been issued an aadhaar number under this Act;

(c) "authentication" means the process wherein, aadhaar number along with other attributes (including biometrics) are submitted to the Central Identities Data Repository for its verification and such Repository verifies the correctness thereof on the basis of information or data or documents available with it;

(d) "Authority" means the National Identification Authority of India established under sub-section (1) of section 11;

(e) "biometric information" means a set of such biological attributes of an individual as may be specified by regulations;

(f) "Central Identities Data Repository" means a centralised database in one or more locations containing all aadhaar numbers issued to aadhaar number holders along with the corresponding demographic information and biometric information of such individuals and other information related thereto;

(g) "Chairperson" means the Chairperson of the Authority appointed under section 12;

(h) "demographic information" includes information relating to the name, age, gender and address of an individual (other than race, religion, caste, tribe, ethnicity, language, income or health), and such other information as may be specified in the regulations for the purpose of issuing an aadhaar number;

(i) "enrolling agency" means an agency appointed by the Authority or by the Registrars, as the case may be, for collecting information under this Act;

(j) "enrolment" means such process, as may be specified by regulations, to collect demographic information and biometric information from individuals by the enrolling agencies for the purpose of issuing of aadhaar number to such individuals under this Act;

(k) "identity information" in respect of an individual means biometric information, demographic information and aadhaar number of such individuals;

(l) "Member" includes the Chairperson and a part-time Member of the Authority appointed under section 12;

(m) "notification" means a notification published in the Official Gazette and the expression "notified" with its cognate meanings and grammatical variations shall be construed accordingly;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "Registrar" means any entity authorised or recognised by the Authority for the purpose of enrolling the individuals under this Act;

(p) "regulations" means the regulations made by the Authority under this Act;

(q) "resident" means an individual usually residing in a village or rural area or town or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) within a ward in a town or urban area in India;

(r) "Review Committee" means the Identification Review Committee constituted under sub-section (1) of section 28.

CHAPTER II

AADHAAR NUMBERS

39

3. (1) Every resident shall be entitled to obtain an aadhaar number on providing of his demographic information and biometric information to the Authority in such manner as may be specified by regulations:

Aadhaar number.

Provided that the Central Government may, from time to time, notify such other category of individuals who may be entitled to obtain an aadhaar number.

- (2) On receipt of the demographic information and biometric information under sub-section (1), the Authority shall, after verifying the information, in such manner as may be specified by regulations, issue an aadhaar number to such resident.

4. (1) An aadhaar number, issued to an individual shall not be re-assigned to any other individual.

Properties of aadhaar number.

(2) An aadhaar number shall be a random number and bear no attributes or identity data or part thereof, relating to the aadhaar number holder.

- (3) An aadhaar number shall, subject to authentication, be accepted as proof of identity of the aadhaar number holder.

5. (1) The Authority shall perform authentication of the aadhaar number of a aadhaar number holder in relation to his biometric information and demographic information subject to such conditions and on payment of such fees and in such manner as may be specified by regulations.

Authentication of aadhaar number.

(2) The Authority shall respond to an authentication query with a positive or negative response or with any other appropriate response excluding any demographic information and biometric information.

6. The aadhaar number or the authentication thereof shall not, by itself, confer any right of or be proof of citizenship or domicile in respect of an aadhaar number holder.

Aadhaar number not evidence of citizenship or domicile, etc.

7. The Authority may engage one or more entities to establish and maintain the Central Identities Data Repository and to perform any other functions as may be specified by regulations.

Central Identities Data Repository.

8. The Authority may require the aadhaar number holders to update their demographic information and biometric information, from time to time, in such manner as may be specified by regulations so as to ensure continued accuracy of their information in the Central Identities Data Repository.

Updation of certain information.

9. The Authority shall not require any individual to give information pertaining to his race, religion, caste, tribe, ethnicity, language, income or health.

Prohibition on requiring certain information.

10. The Authority shall take special measures to issue aadhaar number to women, children, senior citizens, persons with disability, migrant unskilled and unorganised workers, nomadic tribes or to such other persons who do not have any permanent dwelling house and such other categories of individuals as may be specified by regulations.

Special measures for issuance of aadhaar number to certain categories of persons.

CHAPTER III

NATIONAL IDENTIFICATION AUTHORITY OF INDIA

11. (1) The Central Government shall, by notification, establish an Authority to be known as the National Identification Authority of India to exercise the powers conferred on it and to perform the functions assigned to it under this Act.

Establishment of Authority.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Authority shall be in the National Capital Region referred to in clause (f) of section 2 of the National Capital Region Planning Board Act, 1985. 5 2 of 1985.

(4) The Authority may, with the prior approval of the Central Government, establish its offices at other places in India.

Composition of Authority.

12. The Authority shall consist of a Chairperson and two part-time Members to be appointed by the Central Government. 10

Qualifications for appointment of Chairperson and Members of Authority.

13. The Chairperson and Members of the Authority shall be persons of ability, integrity and outstanding calibre having experience and knowledge in the matters relating to technology, governance, law, development, economics, finance, management, public affairs or administration.

Term of office and other conditions of service of Chairperson and Members.

14. (1) The Chairperson and the Members appointed under this Act shall hold office for a term of three years from the date on which they assume office and shall be eligible for reappointment: 15

Provided that no person shall hold office as a Chairperson or Member after he has attained the age of sixty-five years:

Provided further that the Chairperson of the Unique Identification Authority of India appointed before the commencement of this Act by notification A-43011/02/2009-Admn.I (Vol.II) dated the 2nd July, 2009 shall continue as a Chairperson of the Authority under this Act for the term for which he had been appointed. 20

(2) The Chairperson and every Member shall, before entering upon their office, make and subscribe to, an oath of office and of secrecy, in such form and in such manner and before such Authority as may be prescribed. 25

(3) Notwithstanding anything contained in sub-section (1), the Chairperson or Member may—

(a) relinquish his office, by giving in writing to the Central Government, a notice of not less than thirty days; or 30

(b) be removed from his office in accordance with the provisions of section 15.

(4) The Chairperson shall not hold any other office during the period of holding his office in the Authority as such.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and allowances or remuneration payable to part-time Members shall be such as may be prescribed: 35

Provided that the salary, allowances and the other terms and conditions of service of the Chairperson shall not be varied to his disadvantage after his appointment.

Removal of Chairperson and Members.

15. (1) The Central Government may remove from office the Chairperson, or a Member, who— 40

(a) is, or at any time has been adjudged as an insolvent;

(b) has become physically or mentally incapable of acting as the Chairperson or, as the case may be, a Member;

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; 45

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or, as the case may be, a Member; or

(e) has, in the opinion of the Central Government, so abused his position as to render his continuance in office detrimental to the public interest.

(2) The Chairperson, or a Member shall not be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

16. The Chairperson or a Member, ceasing to hold office as such, shall not, without previous approval of the Central Government,—

Restrictions on Chairperson or Members on employment after cessation of office.

(a) accept any employment in, or connected with the management or administration of, any person which has been associated with any work under the Act, for a period of three years from the date on which they cease to hold office:

10 Provided that nothing contained in this clause shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined in section 617 of the Companies Act, 1956:

1 of 1956.

15 (b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for or provided advice to, the Authority;

20 (c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public;

(d) enter, for a period of three years from his last day in office, into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

25 17. The Chairperson shall have powers of general superintendence, direction in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, and without prejudice to any of the provisions of this Act, exercise and discharge such other powers and functions of the Authority as may be prescribed.

Functions of Chairperson.

30 18. (1) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations.

Meetings.

(2) The Chairperson, or, if for any reason, he is unable to attend a meeting of the Authority, the senior most Member shall preside over the meetings of the Authority.

35 (3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting and in the event of an equality of votes, the Chairperson or in his absence the Member presiding over shall have a second or casting vote.

40 (4) All decisions of the Authority shall be authenticated by the signature of the Chairperson or any other Member authorised by the Authority in this behalf.

(5) If any Member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the Member shall not take part in any deliberation or decision of the Authority with respect to that matter.

19. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority;

(b) any defect in the appointment of a person as a Member of the Authority; or

Vacancies, etc., not to invalidate proceedings of Authority.

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and other employees of Authority.

20. (1) There shall be a chief executive officer of the Authority, not below the rank of the Additional Secretary to the Government of India, who shall be the Member-Secretary of the Authority, to be appointed by the Central Government.

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(2) The Authority may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees required to the Authority in the discharge of its functions.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the chief executive officer and other officers and other employees of the Authority shall be such as may be specified by regulations with the approval of the Central Government.

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Functions of chief executive officer of Authority.

21. (1) The chief executive officer shall be the legal representative of the Authority and shall be responsible for—

(a) the day-to-day administration of the Authority;

(b) implementing the work programmes and decisions adopted by the Authority;

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(c) drawing up of proposal for the Authority's work programmes;

(d) the preparation of the statement of revenue and expenditure and the execution of the budget of the Authority.

(2) Every year, the chief executive officer shall submit to the Authority for approval—

(a) a general report covering all the activities of the Authority in the previous year;

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(b) programmes of work;

(c) the annual accounts for the previous year; and

(d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the Authority.

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Transfer of assets, liabilities of Authority.

22. On and from the establishment of the Authority —

(1) all the assets and liabilities of the Unique Identification Authority of India, established vide notification of the Government of India in the Planning Commission number A-43011/02/2009-Admin.I, dated the 28th January, 2009, shall stand transferred to, and vested in, the Authority.

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Explanation.— The assets of such Unique Identification Authority of India shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such Unique Identification Authority of India and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

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(2) without prejudice to the provisions of sub-section (1), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such Unique Identification Authority of India immediately before that day, for or in connection with the purpose of the said Unique Identification Authority of India, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;

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(3) all sums of money due to the Unique Identification Authority of India immediately before that day shall be deemed to be due to the Authority; and

(4) all suits and other legal proceedings instituted or which could have been instituted by or against such Unique Identification Authority of India immediately before that day may be continued or may be instituted by or against the Authority.

23. (1) The Authority shall develop the policy, procedure and systems for issuing aadhaar numbers to residents and perform authentication thereof under this Act.

Powers and functions of Authority.

(2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Authority may, *inter alia*, include all or any of the following matters, namely:—

- (a) specifying, by regulation, demographic information and biometric information for enrolment for an aadhaar number and the processes for collection and verification thereof;
- (b) collecting demographic information and biometric information from any individual seeking an aadhaar number in such manner as may be specified by regulations;
- (c) appointing of one or more entities to operate the Central Identities Data Repository;
- (d) generating and assigning aadhaar numbers to individuals;
- (e) performing authentication of the aadhaar numbers;
- (f) maintaining and updating the information of individuals in the Central Identities Data Repository in such manner as may be specified by regulations;
- (g) omitting and deactivating of an aadhaar number and information relating thereto in such manner as may be specified by regulations;
- (h) specify the usage and applicability of the aadhaar number for delivery of various benefits and services as may be provided by regulations;
- (i) specifying, by regulation, the terms and conditions for appointment of Registrars, enrolling agencies and service providers and revocation of appointments thereof;
- (j) **establishing, operating and maintaining of the Central Identities Data Repository;**
- (k) sharing, in such manner as may be specified by regulations, the information of aadhaar number holders, with their written consent, with such agencies engaged in delivery of public benefits and public services as the Authority may by order direct;
- (l) calling for information and records, conducting inspections, inquiries and audit of the operations for the purposes of this Act of the Central Identities Data Repository, Registrars, enrolling agencies and other agencies appointed under this Act;
- (m) specifying, by regulation, various processes relating to data management, security protocols and other technology safeguards under this Act;
- (n) specifying, by regulation, the conditions and procedures for issuance of new aadhaar number to existing aadhaar number holder;
- (o) levy and collect the fees or authorise the Registrars, enrolling agencies or other service providers to collect such fees for the services provided by them under this Act in such manner as may be specified by regulations;
- (p) appoint such committees as may be necessary to assist the Authority in discharge of its functions for the purposes of this Act;
- (q) promote research and development for advancement in biometrics and related areas, including usage and applications of aadhaar numbers through appropriate mechanisms;
- (r) specifying, by regulation, the policies and practices for Registrars, enrolling agencies and other service providers;

(s) setting up facilitation centres and grievance redressal mechanisms for redressal of grievances of residents, Registrars, enrolling agencies and other service providers;

(t) such other powers and functions as may be prescribed.

(3) The Authority may,—

(a) enter into a Memorandum of Understanding or agreement, as the case may be, with Central Government or State Governments or Union territories or other agencies for the purpose of performing any of the functions in relation to collecting, storing, securing or processing of information or performing authentication;

(b) by notification, appoint such number of Registrars, engage and authorise such agencies to collect, store, secure, process information or do authentication or perform such other functions in relation thereto,

as may be necessary for the purposes of this Act.

(4) The Authority may engage such consultants, advisors and other persons as may be required for efficient discharge of its functions under this Act on such allowances or remuneration and terms and conditions as may be specified by regulations.

CHAPTER IV

GRANTS, ACCOUNTS AND AUDIT AND ANNUAL REPORT

Grants by
Central
Government.

24. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority, grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Other fees and
revenue.

25. The fees or revenue collected by the Authority shall be credited to the Consolidated Fund of India and the entire amount so credited be transferred to the Authority.

Accounts and
audit.

26. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited annually by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts, and in particular, shall have the right to demand production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.

(4) The accounts of the Authority, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Authority and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

Returns and
annual report,
etc.

27. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and particulars in regard to any matter under the jurisdiction of the Authority, as the Central Government may from time to time require.

(2) The Authority shall prepare, once in every year, and in such form and manner and at such time as may be prescribed, an annual report giving—

(a) a description of all the activities of the Authority for the previous years;

(b) the annual accounts for the previous year; and

(c) the programmes of work for coming year.

(3) A copy of the report received under sub-section (2) shall be laid by the Central Government, as soon as may be after it is received, before each House of Parliament.

CHAPTER V

IDENTITY REVIEW COMMITTEE

5 28. (1) The Central Government may, by notification, constitute the Identity Review Committee to discharge functions specified under sub-section (1) of section 29 in respect of any matter connected with the usage of the aadhaar numbers. Review Committee.

(2) The Review Committee shall consist of three members (one of whom shall be chairperson designated as such by the Central Government) who are persons of eminence, ability, integrity and standing in public life having knowledge and experience in the fields of 10 technology, law, administration and governance, social service, journalism, management or social sciences.

(3) The members of the Review Committee shall be appointed by the Central Government on the recommendations of a committee consisting of—

- 15 (a) the Prime Minister, who shall be the Chairperson of the committee;
(b) the Leader of Opposition in the Lok Sabha; and
(c) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation.— For the removal of doubts, it is hereby declared that where the Leader of the Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in Opposition of the Government in the House of the People shall 20 be deemed to be the Leader of the Opposition.

(4) The member of the Review Committee shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or a member of any political party.

25 (5) The members of the Review Committee shall hold office for a term of three years from the date on which they enter upon office and shall not be eligible for reappointment.

(6) The Central Government may by order remove from office any member of the Review Committee, who —

- (a) is, or at any time has been adjudged as an insolvent;
30 (b) has become physically or mentally incapable of acting as a member;
(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude;
(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
35 (e) has, in the opinion of the Central Government, so abused his position as to render his continuance in office detrimental to the public interest.

Provided that a Member shall not be removed under clause (d) or clause (e) unless he has been given a reasonable opportunity of being heard in the matter.

40 29. (1) The Review Committee shall ascertain the extent and pattern of usage of the aadhaar numbers across the country and prepare a report annually in relation to the extent and pattern of usage of the aadhaar numbers along with its recommendations thereon and submit the same to the Central Government. Functions of Review Committee.

(2) The manner of preparation of the report referred to in sub-section (1) shall be such as may be determined by the Review Committee.

45 (3) A copy of the report along with the recommendations of the Review Committee shall be laid by the Central Government, as soon as may be after it is received, before each House of Parliament.

CHAPTER VI

46

PROTECTION OF INFORMATION

Security and confidentiality of information.

30. (1) The Authority shall ensure the security and confidentiality of identity information and authentication records of individuals.

(2) The Authority shall take measures (including security safeguards) to ensure that the information in the possession or control of the Authority (including information stored in the Central Identities Data Repository) is secured and protected against any loss or unauthorised access or use or unauthorised disclosure thereof.

(3) Notwithstanding anything contained in any other law and save as otherwise provided in this Act, the Authority or any of its officer or other employee or any agency who maintains the Central Identities Data Repository shall not, whether during his service as such or thereafter, reveal any information stored in the Central Identities Data Repository to any person.

Provided that an aadhaar number holder may request the Authority to provide access to his identity information in such manner as may be specified by regulations.

Alteration of demographic information or biometric information.

31. (1) In case any demographic information relating to an aadhaar number holder is found incorrect or changes subsequently, the aadhaar number holder shall request the Authority to alter such demographic information in his record in the Central Identities Data Repository in such manner as may be specified by regulations.

(2) In case any biometric information of aadhaar number holder is lost or changes subsequently for any reason, the aadhaar number holder shall request the Authority to make necessary alteration in his record in the Central Identities Data Repository in such manner as may be specified by regulations.

(3) On receipt of any request under sub-section (1) or sub-section (2), the Authority may, if it is satisfied, make such alteration as may be required in the record relating to such aadhaar number holder and intimate such alteration to the concerned aadhaar number holder.

Access to own information and records of requests for authentication.

32. (1) The Authority shall maintain details of every request for authentication of the identity of every aadhaar number holder and the response provided thereon by it in such manner and for such time as may be specified by regulations.

(2) Every aadhaar number holder shall be entitled to obtain details of request for authentication of his aadhaar number and the response provided thereon by the Authority in such manner as may be specified by regulations.

Disclosure of information in certain cases.

33. Nothing contained in sub-section (3) of section 30 shall apply in respect of—

(a) any disclosure of information (including identity information or details of authentication) made pursuant to an order of a competent court; or

(b) any disclosure of information (including identity information) made in the interests of national security in pursuance of a direction to that effect issued by an officer or officers not below the rank of Joint Secretary or equivalent in the Central Government specifically authorised in this behalf by an order of the Central Government.

CHAPTER VII

OFFENCES AND PENALTIES

Penalty for impersonation at time of enrolment.

34. Whoever impersonates or attempts to impersonate another person, whether dead or alive, real or imaginary, by providing any false demographic information or biometric information shall be punishable with imprisonment for a term which may extend to three years and with a fine which may extend to ten thousand rupees.

35. Whoever, with the intention of causing harm or mischief to a aadhaar number holder, or with the intention of appropriating the identity of a aadhaar number holder changes or attempts to change any demographic information or biometric information of a aadhaar number holder by impersonating or attempting to impersonate another person, dead or alive, real or imaginary, shall be punishable with imprisonment for a term which may extend to three years and shall be liable to a fine which may extend to ten thousand rupees.

Penalty for impersonation of aadhaar number holder by changing demographic information or biometric information.

36. Whoever, not being authorised to collect identity information under the provisions of this Act, by words, conduct or demeanour pretends that he is authorised to do so, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

Penalty for impersonation.

37. Whoever, intentionally discloses, transmits, copies or otherwise disseminates any identity information collected in the course of enrolment or authentication to any person not authorised under this Act shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

Penalty for disclosing identity information.

38. Whoever, not being authorised by the Authority, intentionally,—

- (a) accesses or secures access to the Central Identities Data Repository; or
- (b) downloads, copies or extracts any data from the Central Identities Data Repository or stored in any removable storage medium; or
- (c) introduces or causes to be introduced any virus or other computer contaminant in the Central Identities Data Repository; or
- (d) damages or causes to be damaged the data in the Central Identities Data Repository; or
- (e) disrupts or causes disruption of the access to the Central Identities Data Repository; or
- (f) denies or causes a denial of access to any person who is authorised to access the Central Identities Data Repository; or
- (g) provides any assistance to any person to do any of the acts aforementioned;
- or
- (h) destroys, deletes or alters any information stored in any removable storage media or in the Central Identities Data Repository or diminishes its value or utility or effects it injuriously by any means; or
- (i) steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used by the Authority with an intention to cause damage,

Penalty for unauthorised access to the Central Identities Data Repository.

shall be punishable with imprisonment for a term which may extend to three years and shall be liable to a fine which shall not be less than one crore rupees.

Explanation.— For the purposes of this section, the expressions “computer contaminant”, “computer virus” and “damage” shall have the meanings respectively assigned to them in the *Explanation* to section 43 of the Information Technology Act, 2000.

39. Whoever, not being authorised by the Authority, uses or tampers with the data in the Central Identities Data Repository or in any removable storage medium with the intent of modifying information relating to aadhaar number holder or discovering any information thereof shall be punishable with imprisonment for a term which may extend to three years and shall be liable to a fine which may extend to ten thousand rupees.

Penalty for tampering with data in Central Identities Data Repository.

40. Whoever gives or attempts to give any biometric information which does not pertain to him for the purpose of getting an aadhaar number or authentication or updating his information, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or with both.

Penalty for manipulating biometric information.

General
penalty.

41. Whoever, commits an offence under this Act for which no penalty is provided elsewhere than in this section, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to twenty-five thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

Offences by
companies.

42. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Act to apply
for offence or
contravention
committed
outside India.

43. (1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person, irrespective of his nationality.

(2) For the purposes of sub-section (1), the provisions of this Act shall apply to any offence or contravention committed outside India by any person, if the act or conduct constituting the offence or contravention involves the Central Identities Data Repository.

Power to
investigate
offences.

44. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a police officer not below the rank of Inspector of Police shall investigate any offence under this Act.

Penalties not
to interfere
with other
punishments.

45. No penalty imposed under this Act shall prevent the imposition of any other penalty or punishment under any other law for the time being in force.

Cognizance of
offences.

46. (1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Authority or any officer or person authorised by it.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence punishable under this Act.

CHAPTER VIII

MISCELLANEOUS

Power of
Central
Government
to supersede
Authority.

47. (1) If, at any time, the Central Government is of the opinion,—

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do.

the Central Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President may direct to exercise powers and discharge functions under this Act:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

48. The Chairperson, Members, officers and other employees of the Authority shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Members, officers, etc., to be public servants.

49. Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give, in writing to it, from time to time:

Power of Central Government to issue directions.

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

50. The Authority may, by general or special order in writing, delegate to any Member, officer of the Authority or any other person, subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power under section 53) as it may deem necessary.

Delegation.

Protection of
action taken
in good faith.

51. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Authority or the Chairperson or any Member or any officer, or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rule or regulation made thereunder.

Power of
Central
Government
to make rules.

52. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act. 5

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which and the Authority before whom the oath of office and of secrecy is to be subscribed by the Chairperson and Members under sub-section (2) of section 14; 10

(b) the salary and allowances payable to, and other terms and conditions of service of, the Chairperson and the allowances or remuneration payable to Members of the Authority under sub-section (5) of section 14;

(c) the other powers and functions of the Chairperson of the Authority under section 17; 15

(d) the other powers and functions of the Authority under clause (i) of sub-section (2) of section 23;

(e) the form of annual statement of accounts to be prepared by the Authority under sub-section (1) of section 26; 20

(f) the form and the manner in which and the time within which returns and statements and particulars are to be furnished under sub-section (1) of section 27;

(g) the form and the manner and the time at which the Authority shall furnish annual report under sub-section (2) of section 27;

(h) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules. 25

Power of
Authority to
make
regulations.

53. (1) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder, for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:— 30

(a) the biometric information under clause (e) and the demographic information under clause (h) of section 2;

(b) the process of collecting demographic information and biometric information from the individuals by enrolling agencies under clause (j) of section 2;

(c) the manner of furnishing the demographic information and biometric information by the resident under sub-section (1) of section 3; 35

(d) the manner of verifying the demographic information and biometric information for issue of aadhaar number under sub-section (2) of section 3;

(e) the conditions, fees and manner of authentication of the aadhaar number under sub-section (1) of section 5; 40

(f) the other functions to be performed by Central Identities Data Repository under section 7;

(g) the manner of updating biometric information and demographic information under section 8;

(h) the other categories of individuals under section 10 for whom the Authority shall take special measures for issue of aadhaar number; 45

(i) the time and places of meetings of the Authority and the procedure for transaction of business to be followed by it (including the quorum) under sub-section (1) of section 18;

5 (j) the salary and allowances payable to, and other terms and conditions of service of, the chief executive officer, officers and other employees of the Authority under sub-section (3) of section 20;

(k) the demographic information and biometric information and process for their collection and verification under clause (a) and the manner of their collection under clause (b) of sub-section (2) of section 23;

10 (l) the manner of maintaining and updating the information of individuals in the Central Identities Data Repository under clause (f) of sub-section (2) of section 23;

(m) the manner of omitting and deactivating an aadhaar number and information relating thereto under clause (g) of sub-section (2) of section 23;

15 (n) the usage and applicability of the aadhaar number for delivery of various benefits and services under clause (h) of sub-section (2) of section 23;

(o) the terms and conditions for appointment of Registrars, enrolling agencies and other service providers and the revocation of appointments thereof under clause (i) of sub-section (2) of section 23;

20 (p) the manner of sharing information of aadhaar number holder under clause (k) of sub-section (2) of section 23;

(q) various processes relating to data management, security protocol and other technology safeguards under clause (m) of sub-section (2) of section 23;

(r) the procedure for issuance of new aadhaar number to existing aadhaar number holder under clause (n) of sub-section (2) of section 23;

25 (s) manner of authorising Registrars, enrolling agencies or other services providers to collect such fees for services provided by them under clause (o) of sub-section (2) of section 23;

(t) policies and practices to be followed by the Registrar, enrolling agencies and other service providers under clause (r) of sub-section (2) of section 23;

30 (u) the allowances or remuneration and terms and conditions of consultants, advisors and other persons under sub-section (4) of section 23;

(v) the manner in which an aadhaar number holder can access his identity information under sub-section (3) of section 30;

35 (w) the manner of alteration of demographic information under sub-section (1) and biometric information under sub-section (2) of section 31;

(x) the manner of and the time for maintaining the details of request for authentication and the response thereon under sub-section (1) of section 32;

40 (y) the manner of obtaining, by the aadhaar number holder, the records of request for authentication of his aadhaar number and response thereon under sub-section (2) of section 32;

(z) any other matter which is required to be, or may be, specified, or in respect of which provision is to be or may be made by regulations.

54. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Laying of
rules and
regulations
before
Parliament.

Application of
other laws not
barred.

55. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Power to
remove
difficulties.

56. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty: 5

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. 10

Savings.

57. Anything done or any action taken by the Central Government under the Resolution of the Government of India, Planning Commission bearing notification number A-43011/02/2009-Admin.I, dated the 28th January, 2009, shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Central Government had decided to issue unique identification numbers to all residents in India and to certain other persons. The scheme of unique identification involves collection of demographic information and biometric information from individuals for the purpose of issuing of unique identification numbers to such individuals. The biometric information would involve taking of a set of biological attributes of such individuals.

2. The Central Government, for the purposes of issue of the unique identification numbers, constituted, *vide* its notification dated the 28th January, 2009 being of executive in nature, the Unique Identification Authority of India, which is at present functioning under the Planning Commission.

3. It has been observed and assessed that the issue of unique identification numbers may involve certain issues, such as (a) security and confidentiality of information, imposition of obligation of disclosure of information so collected in certain cases, (b) impersonation by certain individuals at the time of enrolment for issue of unique identification numbers, (c) unauthorised access to the Central Identities Data Repository, (d) manipulation of biometric information, (e) investigation of certain acts constituting offence, and (f) unauthorised disclosure of the information collected for the purposes of issue of the unique identification numbers which should be addressed by law and attract penalties.

4. In view of the foregoing paragraph, it has been felt necessary to make the said Authority as a statutory authority for carrying out the functions of issuing identification numbers to the residents in India in an effective manner. It is, therefore, proposed to enact the National Identification Authority of India Bill, 2010 to provide for the establishment of the National Identification Authority of India for the purpose of issuing identification numbers (which has been referred to as aadhaar number) to individuals residing in India and to certain other classes of individuals and manner of authentication of such individuals to facilitate access to benefits and services to such individuals to which they are entitled and for matters connected therewith or incidental thereto.

5. The National Identification Authority of India Bill, 2010, *inter alia*, seeks to provide—

(a) for issue of aadhaar numbers to every resident by the Authority on providing his demographic information and biometric information to it in such manner as may be specified by regulations;

(b) for authentication of the aadhaar number of an aadhaar number holder in relation to his biometric information and demographic information subject to such conditions and on payment of such fees as may be specified by regulations;

(c) for establishment of the National Identification Authority of India consisting of a Chairperson and two part-time Members;

(d) that the Authority to exercise powers and discharge functions which, *inter alia*, include—

(i) specifying the demographic information and biometric information for enrolment for an aadhaar number and the processes for collection and verification thereof;

(ii) collecting demographic information and biometric information from any individual seeking an aadhaar number in such manner as may be specified by regulations;

(iii) appointing of one or more entities to operate the Central Identities Data Repository;

(iv) maintaining and updating the information of individuals in the Central Identities Data Repository in such manner as may be specified by regulations;

(v) specify the usage and applicability of the aadhaar number for delivery of various benefits and services as may be provided by regulations;

(e) that the Authority shall not require any individual to give information pertaining to his race, religion, caste, tribe, ethnicity, language, income or health;

(f) that the Authority may engage one or more entities to establish and maintain the Central Identities Data Repository and to perform any other functions as may be specified by regulations;

(g) for constitution of the Identity Review Committee consisting of three members (one of whom shall be the chairperson) to ascertain the extent and pattern of usage of the aadhaar numbers across the country and prepare a report annually in relation to the extent and pattern of usage of the aadhaar numbers along with its recommendations thereon and submit the same to the Central Government;

(h) that the Authority shall take measures (including security safeguards) to ensure that the information in the possession or control of the Authority (including information stored in the Central Identities Data Repository) is secured and protected against any loss or unauthorised access or use or unauthorised disclosure thereof;

(i) for offences and penalties for contravention of the provisions of the proposed legislation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 8th November, 2010.

MANMOHAN SINGH



55
ANNEXURE "P-3"

UIDAI STRATEGY OVERVIEW

CREATING A UNIQUE IDENTITY NUMBER FOR
EVERY RESIDENT IN INDIA



Unique Identification Authority of India (UIDAI)
Planning Commission, Govt. of India

April, 2010

Executive Summary

Overview

In India, an inability to prove identity is one of the biggest barriers preventing the poor from accessing benefits and subsidies. Public as well as private sector agencies across the country typically require proof of identity before providing individuals with services. But till date, there remains no nationally accepted, verified identity number that both residents and agencies can use with ease and confidence.

As a result, every time an individual tries to access a benefit or service, they must undergo a full cycle of identity verification. Different service providers also often have different requirements in the documents they demand, the forms that require filling out, and the information they collect on the individual.

Such duplication of effort and 'identity silos' increase overall costs of identification, and cause extreme inconvenience to the individual. This approach is especially unfair to India's poor and underprivileged residents, who usually lack identity documentation, and find it difficult to meet the costs of multiple verification processes.

There are clearly, immense benefits from a mechanism that uniquely identifies a person, and ensures instant identity verification. The need to prove identity only once will bring down transaction costs for the poor. A clear identity number would also transform the delivery of social welfare programs by making them more inclusive of communities now cut off from such benefits due to their lack of identification. It would enable the government to shift from indirect to direct benefits, and help verify whether the intended beneficiaries actually receive funds/subsidies.

A single, universal identity number will also be transformational in eliminating fraud and duplicate identities, since individuals will no longer be able to represent

themselves differently to different agencies. This will result in significant savings to the state exchequer.

The UIDAI - evolving an approach to identity

The Government of India undertook an effort to provide a clear identity to residents first in 1993, with the issue of photo identity cards by the Election Commission. Subsequently in 2003, the Government approved the Multipurpose National Identity Card (MNIC).

The Unique Identification Authority of India (UIDAI) was established in January 2009, as an attached office to the Planning Commission. The purpose of the UIDAI is to issue a unique identification number (UID) to all Indian residents that is (a) robust enough to eliminate duplicate and fake identities, and (b) can be verified and authenticated in an easy, cost-effective way. The UIDAI's approach will keep in mind the learnings from the government's previous efforts at issuing identity.

The UIDAI will be created as a statutory body under a separate legislation to fulfill its objectives. The law will also stipulate rules, regulations, processes and protocols to be followed by different agencies partnering with the UIDAI in issuing and verifying unique identity numbers.

Features of the UIDAI model

The Unique Identification number (UID) will only provide identity: The UIDAI's purview will be limited to the issue of unique identification numbers linked to a person's demographic and biometric information. The UID will only guarantee identity, not rights, benefits or entitlements.

The UID will prove identity, not citizenship: All residents in the country can be issued a unique ID. The UID is proof of identity and does not confer citizenship.

A pro-poor approach: The UIDAI envisions full enrolment of residents, with a focus on enrolling India's poor and underprivileged communities. The Registrars that the UIDAI plans to partner with – the NREGA, RSBY, and PDS – will help bring large numbers of the poor and underprivileged into the UID system. The UID method of authentication will also improve service delivery for the poor.

Enrolment of residents with proper verification: Existing identity databases in India are fraught with problems of fraud and duplicate/ghost beneficiaries. To prevent this from seeping into the UIDAI database, the UIDAI plans to enrol residents into its database with proper verification of their demographic and biometric information. This will ensure that the data collected is clean from the start of the program.

However, much of the poor and underserved population lack identity documents and the UID may be the first form of identification they have access to. The UIDAI will ensure that the Know Your Resident (KYR) standards don't become a barrier for enrolling the poor, and will devise suitable procedures to ensure their inclusion without compromising the integrity of the data.

A partnership model: The UIDAI approach leverages the existing infrastructure of government and private agencies across India. The UIDAI will be the regulatory authority managing a Central Identities Data Repository (CIDR), which will issue UIDs, update resident information, and authenticate the identity of residents as required.

In addition, the UIDAI will partner with agencies such as central and state departments and private sector agencies who will be 'Registrars' for the UIDAI. Registrars will process UID applications, and connect to the CIDR to de-duplicate resident information and receive UID numbers. These Registrars can either be enrollers, or will appoint agencies as enrollers, who will interface with people seeking UID numbers. The Authority will also partner with service providers for authentication.

The UIDAI will emphasize a flexible model for Registrars: The Registrars will retain significant flexibility in their processes, including issuing cards, pricing, expanding KYR (Know Your Resident) verification, collecting demographic data on residents for their specific requirements,

and in authentication. The UIDAI will provide standards to enable Registrars maintain uniformity in collecting certain demographic and biometric information, and in basic KYR. These standards have been finalized by the Demographic Data Standards and Verification Procedures Committee and Biometric Standards Committees which was constituted by the UIDAI constituted.

Enrolment will not be mandated: The UIDAI approach will be a demand-driven one, where the benefits and services that are linked to the UID will ensure demand for the number. This will not however, preclude governments or Registrars from mandating enrolment.

The UIDAI will issue a number, not a card: The UIDAI's role is limited to issuing the number. This number may be printed on the document/card that is issued by the Registrar.

The number will not contain intelligence: Loading intelligence into identity numbers makes them susceptible to fraud and theft. The UID will be a random number.

The UIDAI will only collect basic information on the resident: The UIDAI will seek the following demographic and biometric information in order to issue a UID number:

- Name
- Date of birth
- Gender
- Father's/Husband's/Guardian's name and UID number (optional for adult residents)
- Mother's/Wife's/Guardian's name and UID number (optional for adult residents)
- Introducer's name and UID number (in case of lack of documents)
- Address
- All ten fingerprints, photograph and both iris scans

Process to ensure no duplicates: Registrars will send the applicant's data to the CIDR for de-duplication. The CIDR will perform a search on key demographic fields and on the biometrics for each new enrolment, to ensure that no duplicates exist.

The incentives in the UID system are aligned towards a self-cleaning mechanism. The existing patchwork of multiple databases in India gives individuals the incentive to provide different personal information to different agencies. Since de-duplication in the UID system ensures that residents have only one chance to be in the database, individuals will provide accurate data. This incentive will become especially powerful as benefits and entitlements are linked to the UID.

Online authentication: The UIDAI will offer a strong form of online authentication, where agencies can compare demographic and biometric information of the resident with the record stored in the central database. The Authority will support Registrars and agencies in adopting the UID authentication process, and will help define the infrastructure and processes they need.

The UIDAI will not share resident data: The UIDAI envisions a balance between 'privacy and purpose' when it comes to the information it collects on residents. The agencies may store the information of residents they enrol if they are authorized to do so, but they will not have access to the information in the UID database. The UIDAI will answer requests to authenticate identity only through a 'Yes' or 'No' response.

Technology will undergird the UIDAI system: Technology systems will have a major role across the UIDAI infrastructure. The UID database will be stored on a central server. Enrolment of the resident will be computerized, and information exchange between Registrars and the CIDR will be over a network. Authentication of the resident will be online. The Authority will also put systems in place for the security and safety of information.

Benefits

For residents: The UID will become the single source of identity verification. Once residents enrol, they can use the number multiple times – they would be spared the hassle of repeatedly providing supporting identity documents each time they wish to access services such as obtaining a bank account, passport, driving license, and so on.

By providing a clear proof of identity, the UID will also facilitate entry for poor and underprivileged residents into the formal banking system, and the opportunity to avail services provided by the government and the private sector. The UID will also give migrants mobility of identity.

For Registrars and enrollers: The UIDAI will only enrol residents after de-duplicating their records. This will help Registrars clean out duplicates from their databases, enabling significant efficiencies and cost savings. For Registrars focused on cost, the UIDAI's verification processes will ensure lower KYR costs. For Registrars focused on social goals, a reliable identification number will enable them to broaden their reach into groups that till now, have been difficult to authenticate. The strong authentication that the UID number offers will improve services, leading to better resident satisfaction.

For Governments: Eliminating duplication under various schemes is expected to save substantial money for the government exchequer. It will also provide governments with accurate data on residents, enable direct benefit programs, and allow government departments to coordinate investments and share information.

Revenue Model

By providing identity authentication, the UIDAI will be taking on a process that costs agencies and service providers hundreds of crores every year. The Authority will evolve suitable policies on the issue of charging a fee for its authentication services, which will offset its long-term costs. Registrars and service providers will also be able to charge for the cards they issue residents with the UID number. Such pricing will be within UIDAI guidelines.

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The UIDAI will start issuing UIDs between August 2010 and February 2011, and plans to cover 600 million people within 4 years from the start of the issuing of the first set of UIDs. This can be accelerated if more Registrars partner with the UIDAI for both enrolment and authentication. The adoption of UIDs is expected to gain momentum with time, as the number establishes itself as the most accepted identity proof in the country.

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Conclusion

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India will be the first country to implement a biometric-based unique ID system for its residents on such a large scale. The UID will serve as a universal proof of identity, allowing residents to prove their identity anywhere in the country. It will give the government a clear view of India's population, enabling it to target and deliver services effectively, achieve greater returns on social investments, and monitor money and resource flows across the country.

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The timing of this initiative is encouraging – the creation of the UIDAI coincides with growing social investment in India, a shift in focus to direct benefits, and with the spread of IT and mobile phones, which has made the public receptive to technology-based solutions. The UIDAI is committed to making this project a success. An initiative of this magnitude will also require the active participation of central, state and local governments, as well as public and private sector agencies across the country. With their support, the project will help realize a larger vision of inclusion and development for India.

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1 Introduction and historical background

A crucial factor that determines an individual's well-being in a country is whether their identity is recognized in the eyes of the government. Weak identity limits the power of the country's residents when it comes to claiming basic political and economic rights. The lack of identity is especially detrimental for the poor and the underprivileged, the people who live in India's "social, political and economic periphery". Agencies in both the public and private sector in India usually require a clear proof of identity to provide services. Since the poor often lack such documentation, they face enormous barriers in accessing benefits and subsidies.

For governments and individuals alike, strong identity for residents has real economic value. While weak identity systems cause the individual to miss out on benefits and services, it also makes it difficult for the government to account for money and resource flows across a country. In addition, it complicates government efforts to account for residents during emergencies and security threats.

However in India, the goal of issuing a universally used, unique identity number to each resident poses a significant challenge. A project of this scale has not been attempted anywhere in the world, and requires an innovative model, distinct from what we have witnessed in identity systems so far anywhere in the world.

1.1 Historical background and evolution of the UIDAI project

The Unique identification project was initially conceived by the Planning Commission as an initiative that would provide a clear and unique identity number for each resident across the country and would be used primarily as the basis for efficient delivery of welfare services. It would also act as a tool for effective monitoring of various programs and schemes of the Government.

The concept of unique identification was first discussed and worked upon since 2006 when administrative approval for the project – "Unique ID for BPL families" was given on March 3rd, 2006 by the Department of Information Technology, Ministry of Communications and Information Technology. This project was to be implemented by the NIC over a period of 12 months. Subsequently, a Processes Committee to suggest processes for updation, modification, addition and deletion of data fields from the core data base to be created under the Unique ID for BPL families Project was set up on July 3rd, 2006.

A "Strategic Vision on the UID Project" was prepared and submitted to this Committee. It envisaged the close linkage that the UID would have to the electoral database. The Committee also appreciated the need of a UID Authority to be created by an executive order under the aegis of the Planning Commission to ensure a pan-departmental and neutral identity for the Authority and at the same time enable a focused approach to attaining the goals set for the XI Plan. The Seventh

Meeting of the Process Committee on 30th August 2007 decided to furnish to the Planning Commission a detailed proposal based on the resource model for seeking its "in principle" approval.

At the same time, the Registrar General of India was engaged in the creation of the National Population Registrar and issuance of Multi-purpose National Identity Cards to citizens of India.

Therefore, it was decided, with the approval of the Prime Minister, to constitute an Empowered Group of Ministers (EGoM) to collate the two schemes - the National Population Register under the Citizenship Act, 1955 and the Unique Identification Number project of the Department of Information Technology. The EGoM was also empowered to look into the methodology and specific milestones for early and effective completion of the Project and take a final view on these. The EGoM was constituted on December 4th, 2006.

The first meeting of the EGoM was held on November 27th, 2007. It recognised the need for creating an identity related resident database, regardless of whether the database is created based on a de-novo collection of individual data or is based on already existing data such as the voter list. It also recognised that there is a crucial and imperative need to identify and establish an institutional mechanism that will "own" the database and will be responsible for its maintenance and updating on an ongoing basis, post its creation.

The second meeting of the EGoM was held on January 28th, 2008. It decided on the strategy for the collation of NPR and UID. Inter-alia, the proposal to establish UID Authority under the Planning Commission was approved.

The third meeting of the EGoM was held on August 7th, 2008. The Planning Commission had placed before the EGoM a detailed proposal for setting up the UIDAI. The meeting decided that certain issues raised by the members with relation to the UIDAI would need to be examined by an official level committee. It referred the matter to a Committee of Secretaries to examine and give its recommendations to the EGoM to facilitate a final decision.

Subsequent to the Committee of Secretaries recommendations, the fourth meeting of the EGoM was held on November 4th, 2008. The recommendations of the Committee of Secretaries was presented to the EGoM and the following decisions were taken:

- a) Initially the UIDAI may be notified as an executive authority, and investing it with statutory authority could be taken up for consideration later at an appropriate time.
- b) UIDAI may limit its activities to the creation of the initial database from the electoral roll/EPIC data. UIDAI may however additionally issue instructions to agencies that undertake creation of databases to ensure standardization of data elements.
- c) UIDAI will take its own decision as to how to build the database.
- d) UIDAI would be anchored in the Planning Commission for five years after which a view would be taken as to where the UIDAI would be located within Government.

- Planning principle"
- Constitutional provisions
- 1.1. Subsequently, on January 22nd, 2009 the Cabinet Secretary in pursuance of the decisions of the Empowered Group of Ministers considered the proposal submitted by the Department of Information Technology regarding the governance structure and recommended that
- The notification for constitution of the UIDAI should be issued immediately.
 - A High Level Advisory, Monitoring and Review Committee headed by Deputy Chairman, Planning Commission to be constituted to oversee the work of the authority.
 - A Member, Planning Commission or the Secretary, Planning Commission may be also assigned the task of looking after the work proposed of the Chief UID Commissioner.
 - Core Team to be put in place.

In pursuance of the Empowered group of Ministers' fourth meeting dated November 4th, 2008, the Unique Identification Authority of India was constituted and notified by the Planning Commission on January 28th, 2009 as an attached office under the aegis of Planning Commission with an initial core team of 115 officials. The role and responsibilities of the UIDAI was laid down in this notification. The UIDAI was given the responsibility to lay down plan and policies to implement UID scheme, and shall own and operate the UID database and be responsible for its updation and maintenance on an ongoing basis.

Subsequently on July 2nd, 2009 Shri Nandan Nilekani was appointed as the Chairman of the UIDAI. Shri Nilekani assumed charge on 23rd July, 2009 and since then the UIDAI has started functioning.

The Prime Minister's Council on UID Authority was constituted on 30th July, 2009 and its first meeting had taken place on 12th August, 2009. The Council endorsed the broad approach submitted by the UIDAI.

Subsequently, the Government constituted a Cabinet Committee on Unique Identification Authority of India vide its order no 1/11/6/2009 dated 22nd October, 2009. The functions of this Committee, as per this notification are: All issues relating to the Unique identification Authority of India including its organisation, plans, policies, programmes, schemes, funding and methodology to be adopted for achieving the objectives of that Authority.

1.2 The UIDAI approach

In 2007, the Planning Commission had recommended an approach to issuing unique identification numbers, where the enrolment into a Unique Identification (UID) database could be speeded up by using existing resident records in the databases of the Election Commission, PAN etc. This approach would speed-up enrolment for those residents present in one of the aforementioned databases. These databases however, may contain inaccuracies.

The model envisioned by the Unique Identification Authority of India (UIDAI) takes into account the inputs of the Planning Commission, as well as learnings from the previous approaches to identity. The detailed approach and the model of implementation is explained in subsequent chapters.

Justice Dr. M. Rama Jois
Member of Parliament,
(Rajya Sabha)

Former Chief Justice of
Punjab and Haryana High Court and
Former Governor of Jharkhand and Bihar



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ANNEXURE

"P-4"

"Sri Shaila"
No. 870-C, 5th Block,
Rajajinagar,
Bangalore - 560 010
Ph: 080 - 23151770

E-mail: ramajois31@gmail.com

Date :

January 19, 2011

Adaraneeya Sri Manmohan Singh

It is reported in Deccan Herald daily, Bangalore in its issue dated 14-01-2011 that "UIDAI ROLLS OUT 10 LAKH AADHAAR NUMBERS". It is said that 10 lakh residents of the Country have been issued Aadhaar Numbers since September 29 last year when the first number was issued. Now the goal is for issuing 600 million Aadhaar numbers in the next four years, according to the press statement by UIDAI Chairman Nandan Nilekani.

As the National Identification Authority of India Bill 2010 is pending before the Rajya Sabha, I was surprised as to how the project is being implemented. Therefore, I wrote a letter on 28th December 2010 to Hon'ble Sri. V. Narayanaswamy, Minister of State in the Ministry of Planning & Parliamentary Affairs, to clarify me as to how such action is being taken when the matter is pending before the Rajya Sabha and how much money has been spent so far. But I have not received any reply.

In fact, I propose to move an amendment to the Bill in the Rajya Sabha under Rule 125 to refer the Bill to Joint Select Committee in view of the colossal expenditure involved in the Bill.

Hence, I am addressing this letter requesting you to inform me how steps are being taken when the Bill is pending before the Parliament.

With Warm Regards.

Yours sincerely,

[M.] RAMA JOIS

Hon'ble Sri. Manmohan Singh
Prime Minister of India,
No. 7, Race Course Road,
NEW DELHI.

Delhi Address: AB-98, Shahjahan Road, New Delhi - 110 003.

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ANNEXURE "P-5"

PRIME MINISTER

NEW DELHI
29 JANUARY, 2011

Dear Justice Dr. Jois,

I have received your letter of 19 January, 2011 regarding reported issuance of Aadhaar numbers.

With regards,

Yours sincerely,

Sd/-

(Manmohan Singh)

Justice Dr. Rama Jois, MP
"Sri Shaila"
No. 870-C, 5th Block
Rajajinagar
Bangalore- 560010

[TRUE COPY]

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~~Enclosure~~



प्रधान मंत्री

Prime Minister

New Delhi
29 January, 2011

Dear Justice Dr. Jois,

I have received your letter of 19 January, 2011
regarding reported issuance of Aadhaar Numbers.

With regards,

Yours sincerely,


(Manmohan Singh)

Justice Dr. M. Rama Jois, MP
"Sri Shaila"
No.870-C, 5th Block
Rajajinagar
Bangalore - 560010

NOTICE UNDER RULE 180 (A) FOR MENTIONING A MATTER
OF URGENT PUBLIC IMPORTANCE IN THE HOUSE
(SPECIAL MENTION)

Dated: 15 March, 11

From

M. Rama Jois

To

The Secretary General

Rajya Sabha, New Delhi

Sir/ Madam,

I request the Chairman to permit me to mention the following matter of urgent Public Importance in the House on 16.03.2011.

Subject: National Identification Authority Bill being implemented.

(TEXT OF THE MATTER TO BE MENTIONED)

The National Identification Authority Bill, 2010 was introduced in Rajya Sabha during 221st Session and has been referred to the standing Committee. Sub-section 2 of section 3

of the Bill empowers the National Identification Authority to issue Aadhar numbers to the residents of the Country. This can be done only after the Bill is passed by both the houses of Parliament and the assent is given by the President and becomes an Act of parliament and brought into force. Surprisingly, the Finance Minister in his Budget speech at page 21 para 120 has stated that 10 lakhs adhar numbers per day will be generated and issued. Further, in the booklet Implementation of Budget announcement, it is stated that Rs. 1900 crores is allotted for this purpose.

Unless the Bill is considered by standing Committee and thereafter debated in both the Houses of Parliament and passed and becomes the law, the issue of Aadhar numbers to the residents tantamount to the circumventing of the Parliament by the executive.

Therefore, through the Special Mention I bring it to the notice of the Finance Minister and Govt. Of India (Nodal Ministry/ Department, Planning Commission) it is appropriate that the issue of Aadhar numbers should be stopped until the bill becomes the law.

[TRUE COPY]

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NOTICE UNDER RULE 120(A) FOR MENTIONING A MATTER OF URGENT PUBLIC IMPORTANCE IN THE HOUSE (SPECIAL MENTION)

नियम 180(क) के अधीन सभा में अविलम्बनीय लोक महत्त्व के विषय (विशेष उल्लेख) का उल्लेख करने की सूचना

From/शिवक

Date/दिनांक 15. March 11

M. RAMA JOIS

To/सेवा में,

THE SECRETARY GENERAL/महासचिव,
RAJYA SABHA, NEW DELHI/राज्य सभा, नई दिल्ली

Sir/Madam, महोदय/महोदया,



I request the Chairman to permit me to mention the following matter of Urgent Public Importance in the House on 15.03.2011.
(date)

यें सभापति से अनुरोध करता/करती हूँ कि मुझे सभा में को निम्नलिखित
(दिनांक)

अविलम्बनीय लोक महत्त्व के विषय का उल्लेख करने की अनुमति दी जाये:-

Subject/विषय:- National Identification Authority Bill, 2010, which is being implemented

(TEXT OF THE MATTER TO BE MENTIONED)
(उल्लेख किये जाने वाले विषय का पाठ)

The National Identification Authority Bill, 2010 was introduced in Rajya Sabha during 221st session and has been referred to the standing committee. Sub- section 2 of Section 3 of the Bill empowers the National Identification Authority to issue Aadhar numbers to the residents of the country. This can be done only after the Bill is passed by both the houses of parliament and the assent is given by the president and becomes an Act of parliament and brought into force. Surprisingly the Finance Minister in his Budget speech at page 21 para 120 has stated that 10 lakhs Adhar Numbers per day will be generated and issued. Further in the booklet Implementation of Budget Announcement, it is stated that Rs. 1900 crores is allotted for this purpose.

Unless the Bill is considers by the standing Committee and thereafter debated in both the Houses of Parliament and passed and becomes the law, the issue of Adhar numbers to the residents tantamounts to the circumventing of the parliament by the executive.

Therefore, through this Special Mention I bring it to the notice of the Finance Minister and Govt. of India (Nodal Ministry /Department. Planning commission). it is appropriate that issue of Adhar numbers should be stopped until the bill becomes the law.

FORTY-SECOND REPORT

STANDING COMMITTEE ON FINANCE
(2011-2012)

(FIFTEENTH LOK SABHA)

MINISTRY OF PLANNING

THE NATIONAL IDENTIFICATION AUTHORITY
OF INDIA BILL, 2010

Presented to Lok Sabha on 13 December, 2011

Laid in Rajya Sabha on 13 December, 2011



LOK SABHA SECRETARIAT
NEW DELHI

December, 2011/Agrahayana, 1933 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON FINANCE
(2011-2012)

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri Shivkumar Udasi
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai

22. Shri S.S. Ahluwalia
23. Shri Raashid Alvi
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri Moinul Hassan
27. Shri Satish Chandra Misra
28. Shri Mahendra Mohan
29. Dr. Mahendra Prasad
30. Dr. K.V.P. Ramachandra Rao
31. Shri Yogendra P. Trivedi

SECRETARIAT

- | | |
|---------------------------------|---------------------------|
| 1. Shri A.K. Singh | — <i>Joint Secretary</i> |
| 2. Shri R.K. Jain | — <i>Director</i> |
| 3. Shri Ramkumar Suryanarayanan | — <i>Deputy Secretary</i> |

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Forty-Second Report on "The National Identification Authority of India Bill, 2010".

2. The National Identification Authority of India Bill, 2010 introduced in Rajya Sabha on 3 December, 2010 was referred to the Committee on 10 December, 2010 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.
3. The Committee obtained background note, detailed note and written information on various provisions contained in the aforesaid Bill from the Ministry of Planning.
4. Written suggestions/views/memoranda on the provisions of the Bill were received from various institutions/experts/individuals.
5. The Committee took briefing/oral evidence of the representatives of the Ministry of Planning and the Unique Identification Authority of India (UIDAI) at their sitting held on 11 February, 2011.
6. At the sitting held on 29 June, 2011, the Committee heard the views of the representatives of (i) the National Human Rights Commission (NHRC), and (ii) the Indian Banks Association (IBA), and Dr. Reetika Khera, Visitor, Delhi School of Economics, New Delhi. The Committee also heard the views of the representatives of the Confederation of Indian Industry (CII), and experts namely, Dr. Usha Ramanathan, Independent Law Researcher, New Delhi, Dr. R. Ramakumar, Associate Professor, the Tata Institute of Social Sciences, Mumbai and Shri Gopal Krishna, Member, Citizen Forum for Liberties, New Delhi at the sitting held on 29 July, 2011.
7. The Committee, at their sitting held on 8 December, 2011 considered and adopted this Report.
8. The Committee wish to express their thanks to the officials of the Ministry of Planning and the Unique Identification Authority of India (UIDAI) for furnishing the requisite material and information which were desired in connection with the examination of the Bill. The Committee

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would also thank all the institutions and experts for their valuable suggestions on the Bill.

9. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
9 December, 2011
20 Agrahayana, 1933 (Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

REPORT

PART I

A. Introductory

1. With a view to ensure that the benefits of centrally sponsored schemes reaches to right person and not misused, the Central Government had decided to issue unique identification numbers to all residents in India and to certain other persons. The scheme of unique identification involves collection of demographic and biometric information from individuals for the purpose of issuing of unique identification numbers to such individuals. The Central Government, for the purpose of issuing unique identification numbers, constituted the Unique Identification Authority of India (UIDAI) on 28th January, 2009, being executive in nature, which is at present functioning under the Planning Commission.

2. It has been observed and assessed by the Government that the issue of unique identification numbers may involve certain issues, such as (a) security and confidentiality of information, imposition of obligation of disclosure of information so collected in certain cases, (b) impersonation by certain individuals at the time of enrolment for issue of unique identification numbers, (c) unauthorised access to the Central Identities Data Repository (CIDR), (d) manipulation of biometric information, (e) investigation of certain acts constituting offence, and (f) unauthorised disclosure of the information collected for the purpose of issue of unique identification numbers, which should be addressed by law and attract penalties.

3. In view of the foregoing paragraph, the Government has felt it necessary to make the said Authority as a statutory authority for carrying out the functions of issuing unique identification numbers to the residents in India and to certain other persons in an effective manner. It is, therefore, proposed to enact the National Identification Authority of India Bill, 2010 to provide for the establishment of the National Identification Authority of India (NIDAI) for the purpose of issuing identification numbers (which has been referred to as aadhaar number) to individuals residing in India and to certain other classes of individuals and manner of authentication of such individuals to facilitate access to benefits and

services to which they are entitled and for matters connected therewith or incidental thereto.

B. Objectives and Salient Features of the Bill

4. The National Identification Authority of India Bill, 2010, introduced in Rajya Sabha on 3rd December, 2010, *inter-alia*, seeks to provide:—

- (a) for issue of aadhaar numbers to every resident by the Authority on providing his demographic and biometric information to it in such manner as may be specified by regulations;
- (b) for authentication of the aadhaar number of an aadhaar number holder in relation to his demographic and biometric information subject to such conditions and on payment of such fees as may be specified by regulations;
- (c) for establishment of the National Identification Authority of India consisting of a Chairperson and two part-time Members;
- (d) that the Authority to exercise powers and discharge functions which, *inter-alia*, include—
 - (i) specifying the demographic and biometric information for enrolment for an aadhaar number and the processes for collection and verification thereof;
 - (ii) collecting demographic and biometric information from any individual seeking an aadhaar number in such manner as may be specified by regulations;
 - (iii) maintaining and updating the information of individuals in the CIDR in such manner as may be specified by regulations;
 - (iv) specify the usage and applicability of the aadhaar number for delivery of various benefits and services as may be provided by regulations;
- (e) that the Authority shall not require any individual to give information pertaining to his race, religion, caste, tribe, ethnicity, language, income or health;
- (f) that the Authority may engage one or more entities to establish and maintain the CIDR and to perform any other functions as may be specified by regulations;
- (g) for constitution of the Identity Review Committee consisting of three members (one of whom shall be the chairperson) to

ascertain the extent and pattern of usage of the aadhaar numbers across the country and prepare a report annually in relation to the extent and pattern of usage of the aadhaar numbers along with its recommendations thereon and submit the same to the Central Government;

- (h) that the Authority shall take measures (including security safeguards) to ensure that the information in the possession or control of the Authority (including information stored in the CIDR) is secured and protected against any loss or unauthorized access or use or unauthorized disclosure thereof; and
- (i) for offences and penalties for contravention of the provisions of the proposed legislation.

C. Evolution of the UIDAI

5. The concept of a Unique Identification (UID) scheme was first discussed and worked upon since 2006 when administrative approval for the scheme "Unique ID for BPL families" was given on 3rd March, 2006 by the Department of Information Technology, Ministry of Communications and Information Technology.

6. Subsequently, a Processes Committee was set up on 3rd July, 2006 to suggest processes for updation, modification, addition and deletion of data fields from the core database to be created under the said project. The Committee appreciated the need of a UID Authority to be created by an executive order under the aegis of the Planning Commission to ensure a pan-departmental and neutral identity for the Authority.

7. Thereafter, since the Registrar General of India was engaged in the creation of the National Population Register (NPR) and issuance of Multi-purpose National Identity Cards to citizens of India, it was decided with the approval of the Prime Minister, to constitute an Empowered Group of Ministers (EGoM) to collate the two schemes – the NPR under the Citizenship Act, 1955 and the UID scheme. The EGoM was also empowered to look into the methodology and specific milestones for early and effective completion of the scheme and take a final view on these. The EGoM was constituted on 4th December, 2006 and a series of meetings took place as follows:—

(a) First meeting of EGoM: 22nd November, 2007

- Recognized the need for creating an identity related resident database regardless of whether the database is

created based on a de-novo collection of individual data or is based on already existing data such as the voter list.

- Need to identify and establish institutional mechanism that will own the database and be responsible for its maintenance.

(b) Second meeting of EGoM: 28th January, 2008

- The proposal to establish UID Authority under the Planning Commission was approved.

(c) Third meeting of EGoM: 7th August, 2008

- Referred certain matters raised with relation to the UIDAI to a Committee of Secretaries for examination.

(d) Fourth meeting of EGoM: 4th November, 2008

- It was decided to notify UIDAI as an executive authority. Decision on investing it with statutory authority would be taken up later.
- UIDAI would be anchored in the Planning Commission for five years after which a view would be taken as to where the UIDAI would be located within Government.

8. The UIDAI was constituted on 28th January, 2009 under the Chairmanship of Shri Nandan M. Nilekani as an attached office under the aegis of the Planning Commission. The UIDAI was *inter-aila* given the responsibility to lay down plan and policies to implement the UID scheme, own and operate the UID database and be responsible for its updation and maintenance on an ongoing basis. The Prime Minister's Council of UIDAI and a Cabinet Committee on UIDAI (called CC-UIDAI) were set up on 30th July, 2009 and 22nd October, 2009 respectively for achieving the objectives of the Authority.

9. Asked why the matter of conferring statutory status to the UIDAI was deferred, the Ministry of Planning have submitted their written response as under:—

"Based on the proposal that formation of the UIDAI under the Planning Commission would ensure better coordination with different departments, it was decided that initially the UIDAI may be notified as an executive authority under the Planning Commission and the issue of investing the UIDAI with statutory authority and the reconciliation of such statutory role with National Registration Authority (NRA) can be considered at an appropriate time."

10. Justifying the extension of the UID scheme, which is initially intended for BPL families, to all residents and other categories of individuals, the Ministry of Planning in their written response have submitted as under:—

“The UID scheme was extended to all residents and other categories of individuals to gradually do away the *de novo* exercises each time for field level data collection. Simultaneously, it would also ensure that links to more and more identity based databases are created by inclusion of the UID number in their databases”.

11. In this regard, Dr. R. Ramakumar, Expert, in his post-evidence reply has, among other things, added as follows:—

“.....it has been proven again and again that in the Indian environment, the failure to enroll with fingerprints is as high as 15% due to the prevalence of a huge population dependent on manual labour. These are essentially the poor and marginalised sections of the society. So, while the poor do indeed need identity proofs, aadhaar is not the right way to do that....”

12. The Ministry in their written reply have stated, among other things, that:—

“While there may be a number of factors contributing to the failure to enroll (like geography, age groups, occupation etc.) and the figures quoted..... may not hold good in all situations, failure to enroll is a reality.... For enrolment purpose, UIDAI has already built in processes to handle biometric exceptions.”

D. Issuance of Aadhaar Numbers pending passing the Bill by Parliament

13. Justice Dr. M. Rama Jois, MP (Rajya Sabha) in his representation addressed to the Chairman, Standing Committee on Finance has *inter-alia* pointed out since the NIDAI Bill is pending for consideration before the Standing Committee on Finance, implementation of the provisions of the Bill, issue of aadhaar numbers and incurring expenditure from the exchequer by the Government is a clear circumvention of Parliament, and therefore, should be kept in abeyance awaiting debate in and decision of both Houses of Parliament.

14. On being asked about the legal basis under which the UIDAI is functioning at present, and the mechanism that the UIDAI has adopted, since its inception, to deal with any of the issues like security and confidentiality of information and other offences related to issue of the

aadhaar numbers, the Ministry of Planning in a written reply have *inter-alia* stated that:—

"....The matter about commencement of operation of the UIDAI before a legal framework was put in place was referred to the Ministry of Law and Justice wherein opinion was sought on the issue whether in absence of a specific enabling law, would there be any constraints in collecting the data (including biometrics) and in issuing the UID numbers to residents in accordance with the mandate given to the Authority. The Ministry of Law and Justice, after examining the matter, had mentioned that it is a settled position that powers of the Executive are co-extensive with the legislative power of the Government and that the Government is not debarred from exercising its executive power in the areas which are not regulated by specific legislation. It had also been opined that till the time such legislation is framed the Authority can continue to function under the executive order issued by the Government and the scheme that may be prepared by the UIDAI. It was also opined that the Authority can collect information/data for implementation of the UID scheme. Such implementation can be done by giving wide publicity to the scheme and persuading the agencies/individual to part with necessary information.

The UIDAI has not faced issues such as breach of security and confidentiality, manipulation of biometrics, unauthorized access to the CIDR or other related offences since its inception.....till the time Parliament passes the Bill, these matters will be covered by the relevant laws."

15. The opinion of the Attorney-General of India on the above mentioned issues as obtained by the Ministry of Law and Justice (Department of Legal Affairs) is furnished below:—

"The competence of the Executive is not limited to take steps to implement the law proposed to be passed by Parliament. Executive Power operates independently. The Executive is not implementing the provisions of the Bill. The Authority presently functioning under the Executive Notification dated 28th January, 2009 is doing so under valid authority and there is nothing in law or otherwise which prevents the Authority from functioning under the Executive Authorisation.

The power of Executive is clear and there is no question of circumventing Parliament or the Executive becoming a substitute of Parliament. On the contrary, what is sought to be done is to

achieve a seamless transition of the authority from an Executive Authority into a statutory authority.

All the expenditure which is being incurred is sanctioned by Parliament in accordance with the financial procedure set forth in the Constitution. If the Bill is not passed by any reason and if Parliament is of the view that the Authority should not function and express its will to that effect, the exercise would have to be discontinued. This contingency does not arise.

The present Bill being implemented without Parliaments' approval does not set a bad precedent in the Parliamentary form of Government. On the contrary, the fact that the Authority is sought to be converted from an Executive Authority to a statutory authority, it underlines the supremacy of Parliament."

16. On this issue, Dr. Usha Ramanathan, Expert, in her post-evidence reply has *inter-alia* stated that:—

"Article 73 of the Constitution delineates the extent of executive power of the Union and describes it as extending to matters with respect to which Parliament has power to make laws.....

While the executive power of the Union, and of the States, is co-extensive with the legislative power of the Union and the States, this is a provision that sets out the limits of the power. These are not provisions that are meant to make Parliament, or the legislatures, redundant. While executive power cannot extend beyond the legislative power of the Union and the States, Parliament and the legislatures can, and routinely do, set out the terms on which the executive is to function. This is also how 'delegated legislation' or 'subordinate legislation' has to be within the extent of the 'parent statute'.....

It is a plain misconception to think that the executive can do what it pleases, including in relation to infringing constitutional rights and protections for the reason that Parliament and legislatures have the power to make law on the subject."

E. UID Scheme

17. A resident who seeks to obtain an aadhaar number shall provide his/her demographic and biometric information to enrolling agencies appointed by Registrars. A resident who does not possess any documentary proof of identity or proof of address can obtain an aadhaar number by being introduced by an introducer.

18. The UIDAI has executed Memoranda of Understanding (MoU) with the partners including all the States and Union Territories, 25 financial institutions (including LIC) to act as Registrars for implementing the scheme. The roles and responsibilities of the partners flow from the MoU.

19. The UIDAI requires only basic identity data such as name, age, gender, address and relationship details in case of minors, for issue of unique identity number. This is commonly known as "Know your Resident (KYR)." The partner registrars are using this resident interface as an opportunity to update their own selected data bases such as ration card number, MGNREGS job card number, PAN card etc. This is commonly known as "Know your Resident Plus" (KYR+). Collection of these information is purely an initiative of respective Registrars and not mandatory for issue of aadhaar number.

20. The UIDAI is collecting bare minimum demographic information from the residents; any other kind of information, viz., rural, semi-urban and urban areas, persons with disabilities, migrant unskilled and unorganized workers, nomadic tribes and others who do not have any permanent dwelling house, is not available with UIDAI. Asked how the coverage of marginalized sections of population, without having the data of aadhaar numbers issued to them, could be achieved, the Ministry has submitted that the Authority proposes to cover the marginalized and poor sections of the population through special enrolment camps organized for them.

21. In a news item dated 6th September, 2011, it has been reported that the Ministry of Home Affairs have identified flaws in the enrolment process followed by the UIDAI, citing cases where people have got aadhaar numbers on the basis of false affidavits.

22. Further, an expert has brought to the notice of the Standing Committee on Finance that issues of liability and responsibility for maintaining accuracy of data on the Register, conducting identity checks and ensuring the integrity of the overall operation of the UID scheme have not been resolved. On being asked to comment on this, the Ministry of Planning have submitted a written reply as follows:—

".....Registrars have to put processes in place to ensure that the data collected is accurate. It is also the responsibility of the Registrars to appoint verifiers (for verifying the documents presented by the resident) and introducers to handle cases where the residents do not have any documents."

23. It has been reported in a news item that the Ministry of Home Affairs have alleged that some of the registrars have not adhered to the

laid down procedures under UIDAI. It has also been noticed that the Government of Kerala *vide* G.O.(MS)No:16/2011/ITD dated 3rd June, 2011 has *inter-alia* stated that the MoU was signed between UIDAI and Government of Kerala for implementation of the UID project subject to condition that the clauses on the standards, protocol, criteria etc. in the MoU shall be in accordance with the State IT policy.

F. Global Experience

24. It has been brought to the notice of the Standing Committee on Finance that on the basis of the findings of London School of Economics (LSE) report, the Government of United Kingdom has abandoned its ID project (repealed its Identity Cards Act, 2006) citing a range of reasons, which includes high cost, unsafe, untested and unreliable technology, and the changing relationship between the State and the citizen etc.

To a specific issue of relevance of any of the above mentioned factors in the Indian context, it has been informed by the Ministry as follows:—

“There are significant differences between the UK’s ID card project and the UID project and to equate the two would not be appropriate.

The differences are as follows:—

- (a) The UK system involved issuing a card which stored the information of the individual including their biometrics on the card. UID scheme involves issuing a number. No card containing the biometric information is being issued. UK already has the National insurance number which is used often as a means to verify the identity of the individual.
- (b) The statutory framework envisaged made it mandatory to have the UK ID card. Aadhaar number is not mandatory.
- (c) The data fields were large and required the individual to provide accurate information of all other ID numbers such as driver’s license, national insurance number and other such details thereby linking the UK ID card database to all other databases on which the individual was registered. UID Scheme collects limited information and the database is not linked to other databases.
- (d) In UK, the legislative framework and structure approached it from a security perspective. The context and need in India is different. The UID scheme is envisaged as a mean to enhance the delivery of welfare benefits and services.”

25. When asked as to whether any analysis has been carried out on the experience of countries where National IDs are in use as well as countries where it has been discontinued, the Ministry have *inter-alia* informed the Committee in a written reply as follows:—

"In some countries the use of smart cards to store significant data about the resident added to concerns about ID fraud and duplication.....

The comparisons between developed countries, which are looking at additional ID forms from a security perspective, versus India, a developing country which, like Brazil and Mexico, is attempting to, build the basic identity and verification infrastructure essential to delivering welfare benefits, and promoting inclusive growth, is not a reasonable one."

G. Existing identity forms v/s need for Aadhaar Number

26. A view has been expressed that adding another form of identity (*i.e.* aadhaar number) without studying the possibility of using the existing forms of identity, for example, Voter ID card, to solve the current problems appears to be a waste of resources.

27. The Ministry of Planning in a written submission have *inter-alia* stated the following:—

"..... in the current framework there is no single document which is uniformly acceptable as proof of identity across India – irrespective of age, gender and familial connections. Establishing identity is a challenge for the poor, particularly when they move from place to place as a consequence lack of proof of identity makes it difficult for the poor to access benefits and services.

..... Aadhaar number is an enabler..... The benefits of aadhaar number are:—

For residents: The aadhaar number will become the single source of identity verification. Once residents enroll, they can use the number multiple times – they would be spared the hassle of repeatedly providing supporting identity documents each time they wish to access services such as obtaining a bank account, passport, driving license, and so on.... the number will also give migrants mobility of identity.

For Registrars and enrollers: The UIDAI will only enroll residents after de-duplicating records. This will help Registrars clean out

duplicates from their databases, enabling significant efficiencies and cost savings. For Registrars focused on cost, the UIDAI's verification processes will ensure lower Know Your Resident (KYR) costs. For Registrars focused on social goals, a reliable identification number will enable them to broaden their reach into groups that till now, have been difficult to authenticate. The strong authentication that the aadhaar number offers will improve services, leading to better resident satisfaction.

For Governments: Eliminating duplication under various schemes is expected to save the Government exchequer a substantial amount. It will also provide Governments with accurate data on residents, enable direct benefit programs, and allow Government departments to coordinate investments and share information."

28. The Ministry have further added that:—

"....reason for starting the project is not for overriding existing Ids.....All the above documents are relevant to a domain and for a service. Aadhaar number is to be used as a general proof of identity and proof of address."

H. Identity and Eligibility

29. According to a news item dated 7th July, 2011, the operationalisation of aadhaar, the unique identification number, will make it possible to link entitlements to targeted beneficiaries. But it will not ensure beneficiaries have been correctly identified. Thus, the old problem of proper identification that bedevils the present system will continue.

30. It has also been brought to the notice of the Standing Committee on Finance that a key issue in targeted welfare schemes is said to be of eligibility and not identity. Government entitlements are unavailable to the poor, primarily due to the eligibility determination process having many loopholes and lacunae. One identity like aadhaar number has nothing to do with such entitlements.

31. Asked to furnish comments, the Ministry of Planning in a written reply have stated that:—

"....With aadhaar number integration in various Government schemes, the identity of the beneficiary gets established, by which it is ensured that the government scheme benefits reach the intended beneficiaries. Availability of identity and eligibility information

together provides an important tool to plug the loopholes in the eligibility determination process, and in managing the eligibility life cycle for a beneficiary."

32. Dr. Reetika Khera, Expert, while deposing before the Committee has *inter-alia* stated as follows:—

".....exclusion is more on account of poor coverage of these schemes. Say, for instance, in the Public Distribution System, the Planning Commission says that only 'x' per cent of the rural population will get the BPL cards and because of that cap that is set at the Central level, we find that lots of people are excluded."

I. Aadhaar Number and National Population Register (NPR)

33. The Standing Committee on Finance, during briefing on the Bill held on 11th February, 2011, raised *inter-alia* the issue of possibility of dovetailing the UID exercise with the census operation. In this regard, the Ministry of Planning in their written reply have, among other things, stated as follows:—

"the UIDAI is adopting a multiple registrar approach and the Registrar General of India (RGI) will be one of the Registrars of the UIDAI. To synergize the two exercises, an Inter Ministerial Coordination Committee has been set up to minimize duplication. The UIDAI is making all efforts to synergize with National Population Register (NPR) exercise... "

34. According to a news item dated 6th September, 2011, the Ministry of Home Affairs said that it would not be preferable to rely entirely on private sector players' for biometric enrolments into the NPR since the population register will form the basis on which citizenship would be determined in the future. Unlike the UIDAI system, the NPR system follows an elaborate procedure to verify and cover the entire population of every area; and the data collected is subjected to 'social vetting'; and accountability can be fixed under the NPR system.

35. In another news article it has been reported that while registration to the NPR is compulsory and a National Identity Number is linked to each name, the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 does not approve of linking biometrics with personal information. However, according to, the annual reports of the Ministry of Home Affairs, it said that integration of photographs and finger biometrics of 17.2 lakh out of 20.6 lakh records has been completed.

J. Coordination between the agencies involved in the UID Scheme

36. In a detailed note on the NIDAI Bill, the Ministry of Planning have *inter-alia* submitted that:—

“Implementation of a project of this size is challenging. It involves co-ordination with multiple stakeholders and effective monitoring of implementation at every level....”

37. The Ministry of Finance (Department of Expenditure), however, while commenting on embedding aadhaar numbers in databases to enable interaction have stated that:—

“It must be done urgently by single agency, perhaps NPR. Cabinet has approved (22.7.2010) outlay of Rs. 3,023.01 crore *inter-alia* for assistance for Information Communication Technology (ICT) infrastructure of Rs. 450 crore for integrating/synergizing Aadhaar numbers with existing databases. Concerned about lack of coordination leading to duplication effort and expenditure with atleast 6 agencies collecting information (NPR, MNREGA, BPL Census, UID, RSBY and Bank Smart Cards).”

38. It has been reported in a news-item dated 3rd October, 2011 that the UID project has become focus of the ire of various arms of the Government for rather disparate reasons. Asked to furnish the comments on the said news-item, the Ministry of Planning have submitted a written reply as follows:—

Views reported in the news-item	Comments of the Ministry of Planning
1	2
....the Finance Ministry rejected UIDAI's request for Rs.14,000 crore expenditure programme.	It is not correct that the Finance Ministry have rejected the budget expenditure. The proposal for phase III has been recommended by the EFC on 15 September, 2011 after optimizing the cost estimates with certain stipulations to be complied with by the UIDAI to achieve economy of scales, avoid duplication and avail convergence in the programme.
...the planning commission too jumped into the fray, suddenly awakening to the deficiency in the structure and functioning of the Authority.	Aadhaar programme is a complex project of its kind launched first time in the country. EFC is an Inter-Ministerial forum to appraise the proposal rigorously to facilitate

1	2
	<p>decision making by the Competent Authority. Planning Commission is one of the nodal apprising agencies to the EFC forum. On approval by Planning Commission some issues regarding design parameters, cost estimates and manner of implementation were emerged, which could not be visualized at project formulation stage. These issues have been deliberated in the EFC meeting and resolved through certain stipulations to be adhered to by UIDAI during execution of the project.</p>
<p>Adding to the confusion were the apparently negative comments made by the Ministry of Home Affairs(MHA) on the flaws in the enrolment process and the security of the bio-metric data. The Home Ministry's apparently nervous of the UIDAI's efforts to extend its aadhaar enrolment mandate; as the office of the Registrar General of India, an arm of the Ministry, is simultaneously compiling a National Population Register (NPR) which is a comprehensive identity database; as a part of the 2011 census operations currently under way.</p>	<p>While responding to the EFC memo of the UIDAI, the RGI (MHA) have observed as follows:—</p> <p>A security audit of the entire process of UIDAI including enrolment process in UIDAI, the enrolment software, data storage, data management, etc. should be conducted by an appropriate agency.</p> <p>The Comments of the UIDAI on this are:—</p> <p>UIDAI is developing a monitoring and evaluation framework to provide a comprehensive mechanism for continuously monitoring and evaluating the UIDAI programme. Considering that a formal structured monitoring and evaluation framework will form the cornerstone for measuring the outcome of UIDAI programme, a distinct component 'Monitoring and evaluation' has been included in the current EFC proposal. Some of the audits planned on a periodic basis are: (i) Enrolment Client Audit; (ii) Enrolment Process (Field) Audits; (iii) ASDMSA Application Audits; (iv) Authentication User Agency Audits; (v) Data Center Audits; (vi) Security Audits; (vii) Impact Assessment (Grants in Aid for Research); and (viii) Other Third Party Audit Services.</p>

1	2
<p>The confusion about the turf of UIDAI and the MHA is rather surprising, given the fact that an EGoM was constituted as early as 2006 to collate the two schemes, namely the NPR and the unique identification number, as aadhaar was then known.</p>	<p>UIDAI has no comments to offer.</p>
<p>RBI made the waters murkier by first going against the Finance Ministry notification that was issued in 2010 to permit the use of Know Your Customer (KYC) norms by limiting the use of aadhaar numbers to "small accounts". It then retracted, by allowing use of aadhaar numbers to all bank accounts without any limitations, but only after again insisting that the banks must satisfy themselves about the current address of the customer. RBI's reluctance to fully accept the aadhaar numbers for the KYC norms is surprising, given that more than a dozen leading banks in the country are partnering with UIDAI to deliver aadhaar numbers to the citizens, and also when the aadhaar number have been accepted by the insurance companies and SEBI for meeting KYC norms.</p>	<p>It is clarified that:—</p> <ul style="list-style-type: none"> (i) aadhaar is sufficient KYC for opening all bank accounts now. This includes no-frill accounts— as per Reserve Bank's circular dated January 27, 2011 – and any bank account as per September 28, 2011 circular. (ii) Banks may ask for additional proof of residence if the current residence is not the same as the address given on the aadhaar document. This procedure is consistent with bank policies applicable to all other officially valid documents including passport, driving license and is not specific to aadhaar.

K. Civil Liberties Perspective

39. In a detailed note on the Bill, the Ministry of Planning have stated that issues like access and misuse of personal information, surveillance, profiling, prohibiting other data bases from storing aadhaar numbers; and securing confidentiality of information which is in the registrars domain need to be addressed in larger data protection legislation. In this connection, the Ministry have been asked to comment on the view that the Bill in its current form appears to be unsafe in law as there is no law at present on privacy, and data protection; therefore, it would be appropriate to consider the Bill for legislation only after passing the legislation on privacy, and data protection so as to ensure that there is no conflict between these laws. The Ministry in a written reply have *inter-alia* stated as under:—

"UIDAI has taken appropriate steps to ensure security and protection of data under this law and has incorporated data

protection principles within its policy and implementation framework.....

Since appropriate steps have been taken, there is no dependency on the general data protection law..... when the data protection framework comes into place the Authority will follow the same since a national data protection law will apply to all agencies and institutions collecting information.

Collection of information without a privacy law in place does not violate the right to privacy of the individual.... There is no bar on collecting information, the only requirement to be fulfilled with respect to the protection of the privacy of an individual is that care should be taken in collection and use of information, consent of individual would be relevant, information should be kept safe and confidential...

.....The proposed Privacy law should also seek to strike a balance between the legitimate demands of protecting individual liberties while recognizing the need for larger public interest to prevail in certain well defined circumstances."

40. Responding to a suggestion received from PRS Legislative Branch that, the existence of a unique identifier may facilitate record linkages across separate databases, the Ministry in a written reply have submitted that issues of linking and matching of databases need to be addressed through a data protection legislation which is currently being considered by the Department of Personnel.

41. The National Human Rights Commission (NHRC), on being asked to comment on the implications of the provisions of the Bill on the individual's right to privacy, has *inter-alia* informed the Committee in their post-evidence reply as follows:—

....the right of privacy presupposes that such information relating to an individual which he would not like to share with others will not be disclosed. It may be mentioned that the right of privacy is not an absolute right....."

42. On the same issue, Dr. Usha Ramanathan, expert, in her post-evidence reply has stated that:—

"....The right to dignity, the right to privacy, personal security and safety, the protection against surveillance, are constitutionally protected. The production of a number accompanied by the use of methods such as fingerprinting and iris scanning is even more

invasive than is permitted to be applied to alleged offenders. Article 20 (3) provides protection against compulsory extraction of personal information. Denying services, and rights, to persons because they are unwilling to part with the information in a manner that is more than likely to result in convergence and commodification of their personal information, surveillance, profiling, tagging and tracking is compulsory extraction that clearly reduces the constitutional rights of an ordinary citizen to less than that of an alleged offender. And that this is being done without the protection of law renders the exercise, per se, illegal. Apart from its 'uses', the potential for abuse is undeniable. In a similar context, another court – the Philippines Supreme Court – said:the data may be gathered for gainful and useful Government purposes; but the existence of this vast reservoir of personal information constitutes a covert invitation to misuse, a temptation that may be too great for some of our authorities to resist."

L. Financial Implications

(i) Feasibility Study

43. The Ministry of Planning in a detailed note on the Bill have stated that aadhaar number is cost-effective compared to other alternate targeted solutions to the problems identified in delivering services and benefits such as eliminating duplicate and fake identities. The Detailed Project Report (DPR) of the UID scheme has been prepared and submitted by M/s. Ernst and Young Pvt. Ltd. in April, 2011.

44. Asked whether any committee has been set up to study the financial implications of the UID scheme; and also to furnish the details of feasibility study carried out, if any, covering all aspects of the UID scheme such as setting up of the proposed NIDAI, and cost-benefit analysis, the Ministry in a written reply have, among other things, submitted that:—

"No committee has been set up to study the financial implications of the UID scheme. As per laid down guidelines/procedure the Expenditure Finance Committee (EFC) reviews project proposals and its financial implications wherein the views of all stakeholders/ministries are taken into account...

.....deliberations were held with all relevant stakeholders including Planning Commission, Registrar General of India, Election Commission of India, Ministry of Rural Development, Ministry of Urban Development and State Governments. A Proof of Concept study was undertaken in the States of Gujarat, Karnataka, U.P. and

Odisha in four rural and one urban locations to establish the feasibility of linking UID with partner-databases and to validate the possibility of one-time linkage which once established would be maintained on an ongoing basis by the UIDAI. An assessment study was carried out in 10 Central Ministries and their respective departments in four States (Karnataka, Uttar Pradesh, Gujarat and West Bengal)."

(ii) Estimated cost of the UID scheme

45. The UID scheme is a Central Sector Scheme. The estimated cost of the Phase-I and Phase-II of the scheme spread over five years is Rs. 3170.32 crore (Rs. 147.31 crore for Phase-I and Rs. 3023.01 crore for Phase-II). The estimated cost includes scheme components for issue of 10 crore UID numbers by March, 2011 and recurring establishment costs for the entire scheme up to March, 2014. The Budget for Phase-III of the scheme to the tune of Rs. 8861 crore has been approved.

46. According to news-items, the total cost of the UID scheme may run up to Rs. 1,50,000 crore. Even after the commitment of such levels of expenditures, the uncertainty over the technological options and ultimate viability of the scheme remains.

(iii) Comparative cost of aadhaar number and existing ID documents

47. Asked to furnish the details of comparative cost of existing ID documents (per individual), namely, Voter Id card, PAN card, driving licence and aadhaar number, the Ministry has *inter-alia* informed the Committee in a written reply that the comparative costs of the documents mentioned above are not available.

(iv) Funding of other bio-metric projects

48. It is noticed that a project namely, Bharatiya — Automated Finger Print Identification System (AFSI), was launched in January, 2009, being funded by the Department of Information Technology, Ministry of Communications and Information Technology, for collection of bio-metric information of the people of the country.

49. Asked to clarify as to whether the bio-metric information (finger prints) being collected under the Bharatiya — AFSI project could also be used by the UIDAI, the Ministry have submitted that:—

"The bio-metrics required for the aadhaar project are iris, ten finger prints and photograph. To ensure uniqueness of the individual, it

is essential that the bio-metrics captured are as per the specifications laid down by the Bio-metrics Standards Committee. The quality, nature and manner of collection of bio-metric data by other bio-metric projects may not be of the nature that can be used for the purpose of the aadhaar scheme and hence it may not be possible to use the fingerprints captured under the Bharatiya-AFSI project."

(v) Revenue model of the UIDAI

50. According to a detailed note on the bill furnished by the Ministry of Planning, demographic data and address verification will be provided free of cost till a separate pricing policy is announced in due course.

51. However, in a news-item dated 6th September, 2011, it has been reported that the Ministry of Home Affairs pointed out uncertainties in the UIDAI's revenue model.

M. Technology

52. The Bio-metrics Standards Committee set up by the UIDAI has recognized in its report that a fingerprints-based bio-metric system shall be at the core of the UIDAI's de-duplication efforts. It has further noted that it is:—

"...conscious of the fact that de-duplication of the magnitude required by the UIDAI has never been implemented in the world. In the global context, a de-duplication accuracy of 99% has been achieved so far, using good quality fingerprints against a database of up to fifty million. Two factors however, raise uncertainty about the accuracy that can be achieved through fingerprints. First, retaining efficacy while scaling the database size from fifty million to a billion has not been adequately analyzed. Second, fingerprint quality, the most important variable for determining de-duplication accuracy, has not been studied in depth in the Indian context."

53. Asked to explain the reliability of technical architecture of the UID scheme, the Ministry of Planning in a detailed note on the NIDAI Bill have, among other things, stated as follows:—

"The UID project is a complex technology project. Nowhere in the world has such a large bio-metric database of a billion people being maintained. The frontiers of technology in bio-metrics are being tested and used in the project.....

The technical architecture of the UID scheme is at this point, is based on high-level assumptions. The architecture has been

structured to ensure clear data verification, authentication and de-duplication, while ensuring a high level of privacy and information security.....

The project team is learning and adapting to the challenges and ensuring that the solutions that are being offered are the best in the world to achieve the task.... "

54. Further asked as to given the high degree of assumptions on the reliability of technology adopted by the UIDAI and probability of system failures of different degrees, whether incurring huge costs on the UID scheme is prudent and affordable, the Ministry have stated in a written reply, among other things, as follows:—

".....UIDAI is cognizant of the fact that biometric matching (which is a patterns matching) by its very nature will suffer from inaccuracy. However, these inaccuracy levels are less than 1%. This cannot be a reason for not attempting to use the technology.

It is well acknowledged that there will be failures in authentication for various reasons. After Proof of Concept studies on authentication, appropriate policies and processes will be developed to take care of situations where failure occurs for various reasons.....The choice of using the authentication services is left to the third party service provider.....Concerned agencies will have to develop policies and procedures to handle such exceptional situations....."

55. In a news article, one of the representatives of the UIDAI has admitted that the quality of fingerprints is bad because of the rough exterior of fingers caused by hardwork, and this poses a challenge for later authentication.

N. National Security v/s the UID Scheme

(i) Illegal residents

56. A concern over the possibility of illegal residents getting aadhaar numbers, and the safeguards in this regard has been raised by the Standing Committee on Finance during the sitting held on 11 February, 2011. In a written reply, the Ministry of Planning have stated as under:—

"Aadhaar number is not a proof of citizenship or domicile [Clause 6 of the Bill]. It only confirms identity and that too subject to authentication [Clause 4(3)]. This is clearly mandated in the NIDAI Bill and the communication being sent to the resident.

It is the responsibility of the Registrars to enroll a resident after due verification as per the procedure laid down by the UIDAI. If a person is not a resident as per the Bill, the Authority is being vested with the power to omit/deactivate the aadhaar number [Clause 23 (2) (g)]. Subsequent attempts to enter the system can be detected".

(ii) Involvement of Private agencies

57. On the issue of security of proposed data of UIDAI, an unstarred question (no.2989) was raised in Rajya Sabha. The Minister of State in the Ministry of Planning and Minister of State in the Ministry of Parliamentary Affairs tabled the answer to the above said question in Rajya Sabha on 22 April, 2010 as follows:—

"National Informatics Centre (NIC) had pointed out that the issues relating to privacy and security of UID data, in case the data is not hosted in a Government data centre may be taken into consideration.

UIDAI is of the opinion that the hosting of data in a private data centre does not necessarily lead to a violation of privacy or security. Appropriate contractual arrangement shall be put in place with the data centre space provider to ensure security and privacy of the data.

At present, UIDAI does not have its own permanent facility to house its data centre. Therefore, 75 sq.ft of data centre space has been hired from M/s. ITI Ltd. for proof of concept and pilot on a rental basis".

58. The Ministry of Home Affairs, according to a news item, have questioned the security of citizens' biometric data in UIDAI's 'outsourced service oriented infrastructure' model.

59. To a specific query as to could outside agencies be allowed to partake in the UID scheme when doubts have been expressed on possible compromise with the interests of the national security, the Ministry of Planning in a written reply have *inter alia* stated that:—

".....the UIDAI has followed government procurement process and engaged the appropriate agencies for the implementation of the UID scheme....The UIDAI has also implemented a comprehensive information security policy....."

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60. It is, however, reported in various news articles as late as dated 26th November, 2011 that controversies between the Ministry of Home Affairs and the UIDAI over the issues such as manner and processes followed by the UIDAI, duplication of efforts between National Population Register and aadhaar, and security of data remain unresolved.

PART II

OBSERVATIONS/RECOMMENDATIONS

1. The Committee have carefully examined the written information furnished to them and heard the views for and against the National Identification Authority of India (NIDAI) Bill from various quarters such as the Ministry of Planning, the Unique Identification Authority of India (UIDAI), the National Human Rights Commission (NHRC) and experts. The clearance of the Ministry of Law and Justice for issuing aadhaar numbers, pending passing the Bill by Parliament, on the ground that powers of the Executive are co-extensive with the legislative power of the Government and that the Government is not debarred from exercising its Executive power in the areas which are not regulated by the legislation does not satisfy the Committee. The Committee are constrained to point out that in the instant case, since the law making is underway with the bill being pending, any executive action is as unethical and violative of Parliament's prerogatives as promulgation of an ordinance while one of the Houses of Parliament being in session.
2. The Committee are surprised that while the country is on one hand facing a serious problem of illegal immigrants and infiltration from across the borders, the National Identification Authority of India Bill, 2010 proposes to entitle every resident to obtain an aadhaar number, apart from entitling such other category of individuals as may be notified from time to time. This will, they apprehend, make even illegal immigrants entitled for an aadhaar number. The Committee are unable to understand the rationale of expanding the scheme to persons who are not citizens, as this entails numerous benefits proposed by the Government. The Committee have received a number of suggestions for restricting the scope of the UID scheme only to the citizens and for considering better options available with the Government by issuing Multi-Purpose National Identity Cards (MNICs) as a more acceptable alternative.
3. The Committee observe that *prima facie* the issue of unique identification number, which has been referred to as "aadhaar number" to individuals residing in India and other classes of individuals under the Unique Identification (UID) Scheme is

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riddled with serious lacunae and concern areas which have been identified as follows:—

- (a) The UID scheme has been conceptualized with no clarity of purpose and leaving many things to be sorted out during the course of its implementation; and is being implemented in a directionless way with a lot of confusion. The scheme which was initially meant for BPL families has been extended for all residents in India and to certain other persons. The Empowered Group of Ministers (EGoM), constituted for the purpose of collating the two schemes namely, the UID and National Population Register (NPR), and to look into the methodology and specifying target for effective completion of the UID scheme, failed to take concrete decision on important issues such as (a) identifying the focused purpose of the resident identity database; (b) methodology of collection of data; (c) removing the overlapping between the UID scheme and NPR; (d) conferring of statutory authority to the UIDAI since its inception; (e) structure and functioning of the UIDAI; (f) entrusting the collection of data and issue of unique identification number and national identification number to a single authority instead of the present UIDAI and its reconciliation with National Registration Authority;
- (b) The need for conferring of statutory authority to the UIDAI felt by the Government way back in November, 2008, but was deferred for more than two years for no reason. In this regard, the Ministry of Planning have informed the Committee that till the time Parliament passes the NIDAI Bill, crucial matters impinging on security and confidentiality of information will be covered by the relevant laws. The Committee are at a loss to understand as to how the UIDAI, without statutory power, could address key issues concerning their basic functioning and initiate proceedings against the defaulters and penalize them;
- (c) The collection of biometric information and its linkage with personal information of individuals without amendment to the Citizenship Act, 1955 as well as the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, appears to be beyond the scope of subordinate legislation, which needs to be examined in detail by Parliament;

- (d) Continuance of various existing forms of identity and the requirement of furnishing 'other documents' for proof of address, even after issue of aadhaar number, would render the claim made by the Ministry that aadhaar number is to be used as a general proof of identity and proof of address meaningless;
- (e) In addition to aadhaar numbers being issued by the UIDAI, the issuance of smart cards containing information of the individuals by the registrars is not only a duplication but also leads to ID fraud as prevalent in some countries; and
- (f) The full or near full coverage of marginalized sections for issuing aadhaar numbers could not be achieved mainly owing to two reasons viz. (i) the UIDAI doesn't have the statistical data relating to them; and (ii) estimated failure of biometrics is expected to be as high as 15% due to a large chunk of population being dependent on manual labour.

4. The Committee regret to observe that despite the presence of serious difference of opinion within the Government on the UID scheme as illustrated below, the scheme continues to be implemented in an overbearing manner without regard to legalities and other social consequences:—

- (i) The Ministry of Finance (Department of Expenditure) have expressed concern that lack of coordination is leading to duplication of efforts and expenditure among at least six agencies collecting information (NPR, MGNREGS, BPL census, UIDAI, RSBY and Bank Smart Cards);
- (ii) The Ministry of Home Affairs are stated to have raised serious security concern over the efficacy of introducer system, involvement of private agencies in a large scale in the scheme which may become a threat to national security; uncertainties in the UIDAI's revenue model;
- (iii) The National Informatics Centre (NIC) have pointed out that the issues relating to privacy and security of UID data could be better handled by storing in a Government data centre;
- (iv) The Ministry of Planning have expressed reservation over the merits and functioning of the UIDAI; and the necessity of collection of iris image;

- (v) Involvement of several nodal appraising agencies which may work at cross-purpose; and
- (vi) Several Government agencies are collecting biometric(s) information in the name of different schemes.

5. The Committee are also unhappy to observe that the UID scheme lacks clarity on many issues such as even the basic purpose of issuing aadhaar number. Although the scheme claims that obtaining aadhaar number is voluntary, an apprehension is found to have developed in the minds of people that in future, services/benefits including food entitlements would be denied in case they do not have aadhaar number.

It is also not clear as to whether possession of aadhaar number would be made mandatory in future for availing of benefits and services. Even if the aadhaar number links entitlements to targeted beneficiaries, it may not ensure that beneficiaries have been correctly identified. Thus, the present problem of proper identification would persist.

It is also not clear that the UID scheme would continue beyond the coverage of 200 million of the total population, the mandate given to the UIDAI. In case, the Government does not give further mandate, the whole exercise would become futile.

6. Though there are significant differences between the identity system of other countries and the UID scheme, yet there are lessons from the global experience to be learnt before proceeding with the implementation of the UID scheme, which the Ministry of Planning have ignored completely. For instance, the United Kingdom shelved its Identity Cards Project for a number of reasons, which included:—
 (a) huge cost involved and possible cost overruns; (b) too complex;
 (c) untested, unreliable and unsafe technology; (d) possibility of risk to the safety and security of citizens; and (e) requirement of high standard security measures, which would result in escalating the estimated operational costs. In this context, the Report of the 'London School of Economics' Report on UK's Identity Project *inter-alia* States that ".....identity systems may create a range of new and unforeseen problems.....the risk of failure in the current proposals

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is therefore magnified to the point where the scheme should be regarded as a potential danger to the public interest and to the legal rights of individuals". As these findings are very much relevant and applicable to the UID scheme, they should have been seriously considered.

7. The UID scheme facilitates the UIDAI and the registrars to create database of information of people of the country. Considering the huge database size and possibility of misuse of information, the Committee are of the view that enactment of national data protection law, which is at draft stage with the Ministry of Personnel, Public Grievances and Pensions, is a pre-requisite for any law that deals with large scale collection of information from individuals and its linkages across separate databases. In the absence of data protection legislation, it would be difficult to deal with the issues like access and misuse of personal information, surveillance, profiling, linking and matching of data bases and securing confidentiality of information etc.

8. The Committee note that the Ministry of Planning have admitted that (a) no Committee has been constituted to study the financial implications of the UID scheme; and (b) comparative costs of the aadhaar number and various existing ID documents are also not available. The Committee also note that Detailed Project Report (DPR) of the UID Scheme has been done much later in April, 2011. The Committee thus strongly disapprove of the hasty manner in which the UID scheme has been approved. Unlike many other schemes/projects, no comprehensive feasibility study, which ought to have been done before approving such an expensive scheme, has been done involving all aspects of the UID scheme including cost-benefit analysis, comparative costs of aadhaar number and various forms of existing identity, financial implications and prevention of identity theft, for example, using hologram enabled ration card to eliminate fake and duplicate beneficiaries.

9. The Committee are afraid that the scheme may end up being dependent on private agencies, despite contractual agreement made by the UIDAI with several private vendors. As a result, the beneficiaries may be forced to pay over and above the charges to be prescribed by the UIDAI for availing of benefits and services, which are now available free of cost.

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10. The Committee find that the scheme is full of uncertainty in technology as the complex scheme is built up on untested, unreliable technology and several assumptions. Further, despite adverse observations by the UIDAI's Biometrics Standards Committee on error rates of biometrics, the UIDAI is collecting the biometric information. It is also not known as to whether the proof of concept studies and assessment studies undertaken by the UIDAI have explored the possibilities of maintaining accuracy to a large level of enrolment of 1.2 billion people. Therefore, considering the possible limitations in applications of technology available now or in the near future, the Committee would believe that it is unlikely that the proposed objectives of the UID scheme could be achieved.

11. The Committee feel that entrusting the responsibility of verification of information of individuals to the registrars to ensure that only genuine residents get enrolled into the system may have far reaching consequences for national security. Given the limitation of any mechanism such as a security audit by an appropriate agency that would be setup for verifying the information etc., it is not sure as to whether complete verification of information of all aadhaar number holders is practically feasible; and whether it would deliver the intended results without compromising national security. As the National Identity Cards to citizens of India are proposed to be issued on the basis of aadhaar numbers, the possibility of possession of aadhaar numbers by illegal residents through false affidavits/introducer system cannot be ruled out.

12. The Committee take note that the Ministry of Home Affairs have alleged that some of the registrars have not adhered to the laid down procedures under UIDAI which renders the Memoranda of Understanding (MoU) signed between the UIDAI and the registrars meaningless; and it compromises the security and confidentiality of information of aadhaar number holders. Even, according to the latest media reports, controversies between the Ministry of Home Affairs and the UIDAI over issues such as the manner and processes followed by the UIDAI, duplication of efforts between NPR and aadhaar, and security of data still remain unresolved.

13. In view of the afore-mentioned concerns and apprehension, the UID scheme, particularly considering the contradictions and ambiguities within the Government on its implementation as well as implications, the Committee categorically convey their unacceptability of the National Identification Authority of India Bill, 2010 in its present form. The data already collected by the UIDAI may be transferred to the National Population Register (NPR), if the Government so chooses. The Committee would, thus, urge the Government to reconsider and review the UID scheme as also the proposals contained in the Bill in all its ramifications and bring forth a fresh legislation before Parliament.

NEW DELHI;
11 December, 2011
20 Agrahayana, 1933 (Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

THE HINDU

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Aadhaar: on a platform of myths

R. Ramakumar

Two countries. Two pet projects of the respective Prime Ministers. Unmistakable parallels in the discourse. "The case for ID cards is a case not about liberty, but about the *modern world*," wrote Tony Blair in November 2006, as he was mobilising support for his Identity Cards Bill, 2004. "Aadhaar...is symbolic of the new and *modern India*," said Manmohan Singh in September 2010, as he distributed the first Aadhaar number in Nandurbar. "What we are trying to do with identity cards is make use of the *modern technology*," said Mr. Blair. "Aadhaar project would use today's latest and *modern technology*," said Dr. Singh. The similarities are endless.

Mr. Blair's celebrated push for identity cards ended in a political disaster for Labour. The British people resisted the project for over five years. Finally, the Cameron government scrapped the Identity Cards Act in 2010, thus abolishing identity cards and plans for a National Identity Register. On the other hand, India is enthusiastically pushing the Aadhaar, or unique identity (UID), project. The UID project has been integrated with the Home Ministry's National Population Register (NPR). The "National Identification Authority of India Bill" has been tabled in Parliament. Globally, observers of identity policies are watching if India learns anything from the "modern" world.

The experience with identity cards in the United Kingdom tells us that Mr. Blair's marketing of the scheme was from a platform of myths. First, he stated that enrolment for cards would be "voluntary". Second, he argued that the card would reduce leakages from the National Health System and other entitlement programmes; David Blunkett even called it not an "identity card," but an "entitlement card." Third, Mr. Blair argued that the card would protect citizens from "terrorism" and "identity fraud." For this, the biometric technology was projected as infallible.

All these claims were questioned by scholarly and public opinion. A meticulous report from the London School of Economics examined each claim and rejected them (see "High-cost, High-risk," *Frontline*, August 14, 2009). This report argued that the government was making the card compulsory across such a wide range of schemes that it would, *de facto*, become compulsory. It also argued that the card would not end identity fraud in entitlement schemes. The reason: biometrics was not a reliable method of de-duplication.

Identity Theft: A Strategic Plan." This plan directed all government offices to "eliminate unnecessary uses of SSNs" and reduction and, where possible, elimination of the need to use SSN to identify individuals. It's quite the contrary in India. According to Nandan Nilekani, Aadhaar number would become "ubiquitous"; he has even advised people to "tattoo it somewhere," lest they forget it!

Myth 3: Identity theft can be eliminated using biometrics.

There is consensus among scientists and legal experts regarding the limitations of biometrics in proving identity. First, no accurate information exists on whether the errors of matching fingerprints are negligible or non-existent. A small percentage of users would always be either falsely matched or not matched at all against the database.

Second, errors of matching would stand significantly amplified in countries like India. A report from 4G Identity Solutions, contracted by UIDAI for supply of biometric devices, notes that:

"It is estimated that approximately five per cent of any population has unreadable fingerprints, either due to scars or aging or illegible prints. In the Indian environment, experience has shown that the failure to enrol is as high as 15 per cent due to the prevalence of a huge population dependent on manual labour."

A 15 per cent failure rate would mean the exclusion of over 200 million people. If fingerprint readers are installed at Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS) work sites and ration shops, and employment or purchases made contingent on correct authentication, about 200 million persons would remain permanently excluded from accessing such schemes.

The report of the UIDAI's "Biometrics Standards Committee" actually accepts these concerns as real. Its report notes that "fingerprint quality, the most important variable for determining de-duplication accuracy, has not been studied in depth in the Indian context." However, this critical limitation of the technology has not prevented the government from leaping into the dark with this project, one whose cost would exceed Rs.50,000 crore.

It is said that the greatest enemy of truth is not the lie, but the myth. A democratic government should not undertake a project of the magnitude of Aadhaar from a platform of myths. The lesson from the U.K. experience is that myths perpetrated by governments can be exposed through consistent public campaigns. India direly needs a mass campaign that would expose the myths behind the Aadhaar project.

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The Aadhaar project, just as its failed counterpart in the U.K., stands on a platform of myths. India needs a mass campaign to expose these myths.

[TRUE COPY]



AN APPEAL TO PARLIAMENTARIANS - Reasons why you should oppose the UID Bill

The draft National Identification Authority of India (NIDAI) Bill will be placed before the Lok Sabha in the current session. Touted by its promoters as a landmark initiative for "good governance", the concept and basic premise of the Bill has been critiqued and challenged on multiple grounds by experts as well as ordinary citizens.

Here are some reasons why you should oppose and vote against the bill when it is placed before the House.

1. False claims

The Government of India and Nandan Nilekani, Chairperson UIDAI, have been claiming that the UID scheme will enable inclusive growth by providing each citizen with a verifiable identity, that it will facilitate delivery of basic services, that it will plug leakages in public expenditure and that it will speed up achievement of targets in social sector schemes.

These claims are false and unjustified. Exclusion and leakages are not caused by the inability to prove identity – they are caused by the deliberate manipulation of the system by those who have the power to control the flow of benefits.

For instance, BPL families who have valid ration cards are unable to get their quota of foodgrains – not because the validity of the card is disputed, but because the ration shop owners exploit them and force them to take less than their due.

Scholarships meant for them are denied to children from Dalit families – not because they cannot prove they are Dalits but because teachers and school administrators pocket the money after forcing the parents to sign on false receipts.

Women workers in NREGA are paid less than their due – not because they cannot prove that they have put in the full quota of work, but because the supervisors and paymasters believe that women do not deserve the same wage as men, and pocket the extra money.

None of these problems will be solved by the possession of a UID number. In fact, a confidential working paper prepared by the UIDAI states that "the UIDAI is only in the identity business. The responsibility of tracking beneficiaries and the governance of service delivery will continue to remain with the respective agencies – the job of tracking distribution of food grains among BPL families for example, will remain with the state PDS department. The adoption of the UID will only ensure that the uniqueness and singularity of each citizen is established and authenticated, thereby promoting equitable access to social services."

In other words, the possession of a UID card can at best serve only as proof of a "unique and singular" identity and does not guarantee either citizenship or benefits. This being the case, it is strange that this scheme is touted as a step for good governance.

2. Violation of privacy and civil liberties

The UID scheme violates the right to privacy. International law and India's domestic law have set clear standards to protect an individual's privacy from unlawful invasion. Under the International Covenant on Civil and Political Rights (ICCPR), ratified by India, an individual's right to privacy is protected from arbitrary or unlawful interference by the state. The Supreme Court has also held the right to privacy to be implicit under article 21 of the Indian Constitution (*Rajagopal v. State of Tamil Nadu*, 1994 and *P.U.C.L. v. Union of India*, 1996). India has enacted a number of laws that provide some protection for privacy. For example the Hindu Marriage Act, the Copyright Act, Juvenile Justice (Care and Protection of Children) Act, 2000, the Indian Contract Act

and the Code of Criminal Procedure all place restrictions on the release of personal information.

Section 33 of the draft bill empowers NIDAI to disclose personal data on an order of a court or in case of "national security" on directions of an officer not below the rank of joint secretary. This is a dilution of existing provisions for protection of privacy under Supreme Court judgments (PUCL versus Union of India) and the IT and Telegraph Acts, all three of which state that such orders can be passed only by the Union or State Home Secretary. There is a high likelihood of this provision being misused by persons in power to access private details for use in ways that may pose a risk to the life or security of the person concerned.

Personal and Household data is being collected through the Census 2010 with a view to establishing a National Population Register. It is proposed to make this information available to the UIDAI. This is in contravention of Section 15 of the Census Act which categorically states that information given for the Census is "not open to inspection nor admissible in evidence".

Moreover, although participation in the UID scheme is supposed to be voluntary and optional, Census respondents are being told that it is mandatory to submit personal information for the National Population Register. The enumerators who are collecting data for the Population Register have been instructed to flag the details of "doubtful cases" who will then be subject to further investigation to determine whether they are "genuine citizens". Enumerators are generally not able to explain the criteria for categorising a particular individual or family as "doubtful".

3. "Functionality creep" and misuse of data

The centralised database where personal data will be stored can easily be linked with other databases, such as the Employees' State Insurance Corporation and databases maintained by the police and intelligence agencies. This raises the risk of "functionality creep", as for instance the use of the UID database for policing and surveillance.

There is a serious concern that the biometric information collected as part of the UID project would be used for policing purposes. The regular use of biometric data in policing can lead to a large number of human rights violations, especially given the possibility of errors in fingerprint matching.

The proposed Bill does not contain any mechanisms for credible and independent oversight of the UIDAI. This increases the risk of 'functionality creep' - the government may add features and additional data to the database without informing or taking the consent of citizens and without re-evaluating the effects on privacy in each instance.

There is no guarantee that the personal data collected and stored in a centralised database will not be misused for purposes other than mere confirmation of identity. The several instances of the involvement of the state in mass carnage (as in Delhi in 1984 and Gujarat in 2002), and the Government's support to and defence of the widespread use of "encounter killings" and other extra-constitutional methods by the police and arm forces, has already created an enabling environment for abuse of the UID database to serve undemocratic, illegal and unethical purposes.

The Bill does not have any provisions to penalise misuse of data by authorised persons (eg UIDAI officials), and therefore has an in-built potential for use of personal data to identify and eliminate "maoists", "terrorists", "habitual offenders", political opponents and others who are perceived as threats by those in power.

4. Inappropriate and unproven technology

Instead of facilitating inclusion, around 150 million people are likely to be excluded from benefits because of the UID scheme.

Millions of Indians working in agriculture, construction workers and other manual labourers have worn-out fingers due to a lifetime of hard labour, resulting in what is technically referred to as 'low-quality' fingerprints. These are precisely the people who are currently excluded from government records and welfare schemes.

This means an NREGA beneficiary with worn-out fingers may present his newly-issued UID number as a conclusive proof of identity to claim payment, but could find the application rejected. The authentication

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process using a fingerprint scanner could classify the applicant's worn-out fingers as a so-called 'false negative'. This is a serious concern, since NREGS has been listed as one of the pilot schemes where the UID identification process will be introduced - the 30 million people currently holding NREGS job cards will be put at risk of exclusion.

This limitation is well recognised by the UIDAI in its working paper, which states that fingerprint authentication is not foolproof, since multiple factors (such as the degree and direction of the pressure applied while placing the finger on the sensor, excessively greasy or dry skin, and distortions caused by rendering a three-dimensional object into a flat plane) can result in "noise and inconsistencies" in the captured image. According to the paper, these distortions result in impairing the system performance and consequently limiting the widespread use of this technology".

The other biometric data to be collected by the UID are iris scans and photographs. An iris scan cannot be done on people with corneal blindness, glaucoma or corneal scars. There are an estimated 6-8 million people in India with corneal blindness, according to researchers at the All India Institute of Medical Sciences, New Delhi. The number of people with corneal scars (caused by infections or injuries to the eyes) will be much more. It is reported that Cabinet Secretary K.M.Chandrasekhar has opposed the collection of iris scans, terming it a "waste of money."

5. Database security not assured

India does not have a robust legal framework or infrastructure for cybersecurity and has weak capabilities in this area - several of our high-security databases have been hacked in the recent past. The huge amounts of personal information collected in the UID database will most likely not be adequately protected and will be vulnerable to hackers and identity thieves.

It is important to note that no country or organisation has successfully deployed a database (biometric or otherwise) of the size envisioned for the UID project, and no technical or corporate body in the world has the experience necessary to ensure its security.

The possibility of corruption and exploitation of data is far greater in a centralised database than when the information is dispersed across different databases. There is also a high risk of errors in the collection of information, recording of inaccurate data, corruption of data and unauthorised access.

Other countries with national identification systems have tried and failed to eliminate the risks of trading and selling of information. India, which has no generally established data protection laws (like the U.S. Federal Privacy Statute or the European Directive on Data Protection) is ill-equipped to deal with such problems.

The US - arguably the most surveillance-prone society in the world - passed a Federal law (the REAL ID Act, 2005) requiring the States to allow the Federal Department of Homeland Security to access State databases such as drivers' licences and motor vehicle registration. As of 2008, not a single State has ratified this Act, and 25 States have passed legislations to exclude themselves from its purview.

Ironically, a confidential working paper titled "Creating a Unique Identity Number for Every Resident in India" was recently posted on the transparency website Wikileaks. The leaked document admits that "the UID database will be susceptible to attacks and leaks at various levels".

If they cannot protect their own confidential documents, we cannot trust the UIDAI to protect the data they propose to collect from us.

6. Unjustifiable costs

The UID project has been launched without a feasibility study or cost-benefit analysis. The current costs are estimated at Rs.45,000 crores. A budget provision of Rs. 1950/- Crores has been made for the current year, of which over 200 crores has already been spent.

Nandan Nilekani claims that several thousand crores of rupees would be saved by the scheme, through prevention of duplicate/fake IDs for claiming benefits under schemes such as the public distribution system and the NREGS. This claim has not been supported with data, and is not substantiated by any studies so far.

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Operationalising the UID scheme on the ground for NREGA and the public distribution system would require placing fingerprint readers at every *panchayat* office and every ration shop. The cost of a fingerprint reader at this time is around USD 50. The total costs of placing fingerprint readers in each PDS outlet and in each of India's 600,000 villages have not been taken into account in official cost calculations.

Verification of identity by the UIDAI will be charged at Rs.10 per query. This being the case, several private agencies may bypass the UIDAI and give preference to other identity proofs.

7. Bypassing of Parliament and democratic processes

The UID Authority has been set up with considerable powers and resources, without any approval from Parliament or discussion in the public domain about the necessity of such a scheme. In the absence of a Constitutional provision or legal framework (such as that set out in the proposed Bill), all the actions of the UIDAI are technically unconstitutional and illegal. There is no transparency either on decisions or on expenditure, no oversight and no mechanisms for accountability in the functioning of the UIDAI.

Nandan Nilekani has been given sweeping powers, and is now demanding the right to select "good officers" to serve under him, bypassing the usual procedures for deputation of officers.

Despite the continuing debate on public platforms, and being repeatedly questioned about the risks, costs and benefits of the UID scheme, Nilekani and the Government of India have remained silent on the contested aspects of the scheme.

8 Lessons from other countries

Several countries (including the USA, the UK, Australia, China, Canada and Germany) have tried such projects and have given these up as impractical, unjustified and dangerous.

One of the first acts of the new government in UK after taking office in June 2010, was to scrap the UID project in that country. According to Theresa May, the UK Home Secretary, "The national identity card scheme represents the worst of government. It is intrusive and bullying. It is ineffective and expensive. It is an assault on individual liberty that does not promise a great good...The government will destroy all information held on the national identity register, effectively dismantling it. The role of the identity commissioner, created in an effort to prevent data blunders and leaks, will be terminated."

It is noteworthy that the reasons cited by the UK government for rejection of the UID scheme - higher costs, impracticality and ungovernable breaches of privacy and civil liberties - are all valid in the Indian case as well. In view of this, it is fair to expect UIDAI to present a comprehensive argument to justify why what was rejected in the UK is good enough for India.

It seems clear that the public pronouncements on the UID scheme being a step towards good governance and inclusive growth are red herrings to divert the attention of the public from the real purpose of NIDAI - to strengthen India's e-surveillance capabilities!

The passage of the IT Act, 2008, was the first step to making India a country where "Big Brother" is watching everyone, all the time - the NIDAI Act will be another great leap forward in this direction!

**Please do not remain silent -
oppose the NIDAI Act
to defend democracy & protect human rights**

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PRAFUL BIDWAI

The UIDAI's plan to use population information compiled from Census 2011 data to generate the UID is fraught with dangers to individual freedoms and rights.



V. RAJU

The pilot project of the UIDAI involved collection of biometric data of individuals, including (above) iris information and (below) fingerprints and photographs in various places.

When the Unique Identification Authority of India (UIDAI) was launched last year, there was no debate on its purpose or clarity about what methods it would use to give each one of 1.2 billion Indians a 16-digit unique identity (UID) number.

Although its Chairman, Information Technology (IT) star Nandan Nilekani, was given Cabinet rank, the UIDAI was not placed under a Ministry but within the Planning Commission, a non-statutory body, which has increasingly appropriated power without public accountability. There was no discussion on the merits of the project vis-a-vis other means of identification for purposes such as employment guarantee schemes, below-poverty-line (BPL) cards, or education entitlements.

The project has since ballooned into a gargantuan scheme. The latest Budget raised its annual allocation 16-fold. It has a new name (Aadhaar) and a logo. Meanwhile, Nilekani has decided that biometric data, including scans of both irises and all 10 fingerprints, will be used for each individual's UID. Even children between five and 15 years will be included "in view of the Right to Education".



The project is now riding piggyback on the Census-2011 enumeration, which has begun. The Census data will be used to prepare a National Population Register, which will compile detailed information on each individual under 15 heads, including name, sex, date of birth, parents' details, present and permanent address, marital status and "if ever married, name of spouse". It will include biometric data. According to Nilekani, the UIDAI will act as "the back-office of the NPR" by "de-duplicating" the collected data to generate the UID. As we see below, the UID-NPR-Census link is illegitimate.

There is no clarity about the project's purpose and the legitimacy of one of its principal functions: profiling citizens from whom the state is potentially at risk, to fight terrorism.

All manner of claims are made about its virtues and its potential to contribute to governance: it will create a reliable register of citizens; demarcate genuine nationals from illegal migrants; help the state keep an eye on terrorists, tax dodgers and money-launderers; bring 60 per cent of the poor who do not have bank accounts into the banking system; and promote microcredit delivery through fingerprint-compatible mobile phones. Above all, the project is supposed to enable accurate targeting of health care, food, National Rural Employment Guarantee Act benefits to the poor, while eliminating leaks and reducing corruption.

DIBYANGSHU SARKAR/AFP



Confusion reigns on whether the UID will be mandatory or voluntary. Nilekani insists it will be optional and concedes that legitimate claimants will be excluded from benefits if it is made mandatory. Yet, logically, its coverage must be comprehensive in order to be efficacious.

Many government functionaries see the UID as a technological fix to social and administrative problems, including leaks in service delivery. Nilekani is more ambivalent. He recently said: "It's early days to say how leakages can be plugged. We are working on it." The first set of UIDs will be issued between August 2010 and February 2011. By 2014, they will cover half the population, with 95 per cent accuracy.

Security rationale

The UID project looks like a solution in search of problems. It is sought to be justified through social and pro-poor functions that are well beyond its core-purpose and can perhaps be achieved by equally efficient means.

Its core rationale and primary purpose is much less lofty than its extravagantly claimed social benefits. It lies in security, surveillance and control – traceable to the idea of a mandatory Multipurpose National Identity Card for all Indians recommended by the Kargil Review Committee chaired by security hawk K. Subrahmaniam.

This committee greatly exceeded its brief and strayed into areas such as security and nuclear weapons doctrines. It seized the Kargil issue to drive a much larger "National Security State" agenda. Home Minister P. Chidambaram himself underscored the UID's security rationale by announcing the UIDAI's establishment in January 2009 as a timely response to the November 2008 Mumbai terror attacks.

This rationale further unfolded with the government announcing a plan to set up a DNA databank and a NATGRID (National Intelligence Grid) connecting 11 agencies, including the Intelligence Bureau, the Research and Analysis Wing, the Central Bureau of Investigation, the Directorate of Revenue Intelligence, the Central Board of Excise and Customs and the Central Board of Direct Taxes.

Pivotal intermediary

The information generated by the NPR will be shared with the UIDAI and NATGRID. The DNA bank and NATGRID are meant to combat terrorism and other challenges to internal security. The UIDAI will be a pivotal intermediary between numerous agencies: the Registrar General (which conducts the Census), the Reserve Bank of India (which regulates commercial banks), and telephone and Internet providers, besides intelligence agencies. This is essential if the UID number is to be accepted as a proof of identity. But how reliable is the UID as the prime, if not sole, information base for security agencies, indeed even the civilian administration? The answer is, not very. Its data would not be subject to verification. Since nationality is to be recorded "as declared" and so transmitted in downstream documentation, any number of non-citizens could instantly register themselves as Indian nationals. They could as easily open bank accounts, obtain Indian travel documents, and get jobs as genuine Indians. This obviously has negative security consequences. These should not be exaggerated. But the fact is that the UID is full of verification and authentication voids.

Even worse, the technology involved in it is highly problematic. A London School of Economics (LSE) team analysed a similar project considered by the British government. It concluded: "The technology envisioned... is to a large extent untested and unreliable. No scheme on this scale has been undertaken anywhere in the world. Smaller and less ambitious systems have encountered substantial technological and operational problems that are likely to be amplified in a large-scale national system." The problems will get immensely magnified in India, which is almost 20 times more populous than Britain and has a rickety administrative system.

The issue of the reliability of IT-based methods is ignored in India, thanks to blind faith in IT. This society is bewitched by technology but has a poor appreciation of science or the scepticism it counsels. Thus, we refuse even to countenance problems of data security and vulnerability to manipulation of electronic voting machines (EVMs), although these are widely recognised in technologically more literate societies - and although IT professionals based at the University of Michigan have successfully hacked into Indian EVMs (The Times of India, May 21).

The UIDAI's database will be preyed upon by numerous agencies, Indian and foreign, commercial and governmental, security-related or involved in industrial espionage. Recently, researchers from the University of Toronto

exposed a China-based computer espionage network that pilfered classified documents from India's Defence Ministry. The "compromised" installations included the Directorate-General of Military Intelligence; three Air Force bases; Indian Military Engineer Services in four places; a Mountain Artillery Brigade in Assam; two Indian military colleges; and Indian Embassy computers in Kabul, Moscow, Dubai, and Nigeria (see <http://nytimes.com/2010/04/06/science/06cyber.html>). Similarly, DNA databases can be corrupted, potentially victimising innocent citizens.

Nothing suggests that the UIDAI-related databases will be more secure than military networks. There is, besides all these weighty considerations, the question of costs of creating and maintaining an enormous database of 1.2 billion citizens. The LSE study estimated that the cost in Britain would be £10-20 billion. The proportionate cost in India would exceed Rs.2 lakh crore, enormous for a poor country, where 70 per cent of the population has no toilets. This means forgoing increased provision of public services.

In an interview to CNN-IBN, Nandan Nilekani does not deny that "this is a project where we are going into uncharted territories, the technological challenges are immense and one of the risks of the project is technology" (<http://www.hindu.com/thehindu/nic/nandannilekani.htm>). He also concedes that "I don't know what the exact figure... is", but still contends that "it is much less than [Rs.1.5 lakh crore]... by a factor of 10".

Violation of privacy

However, all these grave problems pale beside the UID's potential for invading citizens' privacy and violating constitutional freedoms. NATGRID will provide security agencies real time access into 21 categories of databases - including bank account details, credit card transactions, driving licences, and visa and immigration records. An intelligence official has been quoted as saying: "Once you feed in a person's name, you'll get all the details about him, across all databases." These include overdue traffic fines and credit card records. "There really will not be any secrets from the state."

The data collected would greatly exceed the need-based information that people furnish to different agencies to operate a bank account, obtain a passport or get a ration card. Now all this information will be pooled and made to converge in a single database available to hundreds of government departments at the click of a mouse.



Nandan Nilekani, UIDAI chief: "The technological challenges are huge."

This convergence means that the citizen will lose control over his/her personal information. Official agencies can use this information to track citizens' movements, bank transactions and other legitimate activities. This constitutes an impermissible intrusion by Big Brother into privacy, a fundamental right.

The NPR and NATGRID can track and profile individuals by studying transactions and patterns. The NPR is being compiled not under the Census Act but under the Citizenship Act, 1955. The Census Act guarantees confidentiality and says personal data is "not open to inspection nor admissible in evidence". Such protection is missing from the latter, which makes citizen registration "compulsory". The Census Act aims at capturing the profile of the population, not individuals. Profiling of individuals is liable to violate their freedom, privacy and confidentiality.

However, strangely, the UIDAI disowns all responsibility for how its database will be used. It openly declares it is in "the identity business". It states: "The responsibility of tracking beneficiaries and the governance of service delivery will continue to remain with the respective agencies." Also, "the UID number will only guarantee identity, not rights, benefits or entitlements". This falsifies the key rationalisation offered for the scheme: namely, that the UID will break the barriers that prevent the poor from accessing public services/subsidies.

The Indian state's record of abusing technology and personal information is deplorable. Take the recent tapping of politicians' conversations by agencies using new "passive interception technology", which enables them to eavesdrop on all mobile communication within a 2-km radius. This led to an uproar in Parliament. But the government is planning to legalise the use of

such equipment while short-circuiting the procedure for wiretapping under the Telegraph Act, which requires the approval of the Home Secretary and review by a high-level committee headed by the Cabinet Secretary.

The state has always tried to acquire extraordinary powers over citizens and then abuse them. One only has to recall the record of implementation of our preventive detention laws, TADA, POTA and the more than 200 other extraordinary laws such as the Public Security Acts of many States to be gravely concerned at the abuse potential. What India needs is not the UIDAI, but effective legislation to defend privacy and punish intrusion into it.

The intelligence agencies are not answerable to the public and are outside the purview of the Right to Information Act. We can never know what they know about citizens and how they interpret and use this information. The UID scheme and associated database-sharing will enable state agencies to know every minute detail of a citizen's life, but the citizen is barred from knowing what they know about him/her and what they do with that knowledge. This is a mockery of democracy.

This society is already paying heavily for the state's practice of the politics of suspicion, whose most extreme expression is "encounter killing". The National Human Rights Commission (NHRC) recently admitted that as many as 2,560 police "encounters" were reported to it between 1993 and 2006 - an annual average of 183. It found almost half - 1,224, to be precise - to be "fake" or staged, that is, non-judicial executions.

The state behaves particularly roguishly when acting in the name of defending national security. Experience tells us that the key to fighting terrorism is to treat it as a crime and bring its perpetrators to book while addressing its root causes. What is needed is not more intrusive surveillance, nor more sophisticated electronic databases, but good, honest policing, patient collection of evidence and competent prosecution.

To put yet more draconian and unaccountable powers in the hands of the state is to write the charter of citizens' slavery. The UID project does exactly that. It must be uncompromisingly opposed. Or else, we will slide down the slippery slope of strangling people's freedoms and rights and using increasingly intrusive means to "discipline" citizens. Nothing can harm democracy more grievously.

[TRUE COPY]

ID cards are the ultimate identity theft (The Times, March 7, 2008)

Computer systems always fail - and the national database will do so big time
Ian Angell

The ID card project is still on track - more or less. Jacqui Smith is just the latest in a long line of Home Office ministers to sell us the benefits of ID cards, while casually informing us of the latest rise in costs or slippage in its implementation schedule. Ms Smith is also yet another Home Secretary who subscribes to the "pixie dust" school of technology: computation is a magic substance to be sprinkled over problems, that, hey presto, then vanish. Little wonder that Britain has an appalling record in government IT projects.

The ID project is one of the biggest computer systems envisaged - far more complex than the failing NHS system. And it's another disaster waiting to happen. Still the politicians naively claim there will be no problems: it will be totally secure because of biometrics. Apparently iris scans, fingerprints, face-recognition software will all work perfectly, be amazingly cheap to implement - and all foolproof. It must be true, as they've been told this by those selling the technology. Baroness Anelay of St Johns, with a group of parliamentarians, was once given a demonstration of a facial recognition system. It failed; indeed the system subsequently crashed, twice. The reason? The baroness was told her face was "too bland".

The only property that all systems have in common is that they fail. And the bigger the system - 60 million entries on a compulsory ID card database - the greater the opportunity of failure. Systems are much like any life form: they degrade over time, they entropy. In the case of databases, the pick up errors and then build data error upon error. The DVLA in Swansea in 2006, for instance, admitted that a third of entries contained at least one error, and that the proportion was getting worse.

We've all had encounters with computer systems that get it wrong. Barclays once refused one of my transactions because they said I was accessing an account owned by a teenage girl named Ian Angell, who lived at my address and was a professor at LSE. I still had to take a morning off work to explain that a 14-year-old couldn't own an account that, according to their own records, had been open for 35 years.

And however scrupulous the managers might be, errors leak and take on a life of their own. They are sampled by other databases, known as "farming": errors, even when corrected in the original database, live on elsewhere.

But the ID project will be different, we are told. According to the rhetoric, an ID card, one central point of reference, will be so much more efficient and beneficial than you having to prove your identity daily, by producing driving licences, gas bills and so on. Its proponents fail to see that if any of these documents is erroneous, then we don't use the one with, say, a mistake in the address to prove our identity. With the ID card, we won't have the choice. Even if the card is not compulsory, all financial systems will converge on it, and anyone without a card faces great cost and inconvenience. Just like Oyster cards on the London Underground, you're not forced, but it's so much more expensive and tiresome without one.

However, the ID card itself isn't the real problem: it's the ID register. There, each entry will eventually take on a legal status. In time, all other proofs of identity will refer back to the one entry. If the register is wrong - and remember fallible human hands will at some stage have to handle your personal information - then all other databases will be wrong too. Given the propensity of officialdom to trust the details on their computer screen, rather than the person in front of them, you will have to conform to your entry in the register - or become a non-person.

In effect, your identity won't reside in the living flesh and blood of you, but in the database. You will be separated from your identity; you will no longer own it. All your property and money will de facto belong to the database entry. You only have access to your property with the permission of the database. Paradoxically, you only agreed to register to protect yourself from "identity theft", and instead you find yourself victim of the ultimate identity theft - the total loss of control over your identity.

Errors won't just happen by accident. It's possible to imagine that workers on the ID database will be corrupted, threatened or blackmailed into creating perfectly legal ID cards for international terrorists and criminals. Then the ID card, far from eliminating problems, will be a one-stop shop for identity fraud; foreign terrorists, illegal immigrants will be waived past all immigration checks.

At a recent Ditchley Park conference on combating organised crime, a persistent warning from the law enforcement authorities was that criminal gangs had placed "sleepers" in financial sector companies, and they were just waiting for the one big hit. The perpetrators of 80 per cent of all computer security lapses are not hackers, but employees. Cryptographic systems don't help if the criminal has been given the keys to the kingdom. Why should the ID centre be immune, especially when there will be nearly 300 government departments logging in. Furthermore, the register will be the No 1 target for every hacker on the planet: the Olympic Games of hacking.

So why is the Government so keen to force ID cards on us? Is it because ministers are control freaks who, having read 1984, only saw it as a wishlist. John Lennon may have been right: "Our society is run by insane people for insane objectives. I think we're being run by maniacs." More likely, ministers have been dazzled by the myth of the perfectibility of computers.

Ian Angell is Professor of Information Systems at the London School of Economics

The Identity Project – Executive Summary (London School of Economics Study 2005)

Summary of Conclusions

The Report *concludes* that the establishment of a secure national identity system has the potential to create significant, though limited, benefits for society. However, the proposals currently being considered by Parliament are neither safe nor appropriate. There was an overwhelming view expressed by stakeholders involved in this Report that the proposals are *too complex, technically unsafe, overly prescriptive and lack a foundation of public trust and confidence*. The current proposals miss key opportunities to establish a secure, trusted and cost-effective identity system and the Report therefore considers alternative models for an identity card scheme that may achieve the goals of the legislation more effectively. The concept of a national identity system is supportable, but the current proposals are not feasible. Many of the public interest objectives of the Bill would be more effectively achieved by other means. For example, preventing identity theft may be better addressed by giving individuals greater control over the disclosure of their own personal information, while prevention of terrorism may be more effectively managed through strengthened border patrols and increased presence at borders, or allocating adequate resources for conventional police intelligence work.

The technology envisioned for this scheme is, to a large extent, untested and unreliable. No scheme on this scale has been undertaken anywhere in the world. Smaller and less ambitious systems have encountered substantial technological and operational problems that are likely to be amplified in a large-scale, national system. The use of biometrics gives rise to particular concern because this technology has never been used at such a scale.

We estimate the likely cost of the ten-year rollout of the proposed identity cards scheme will be between £10.6 billion and £19.2 billion, with a median of £14.5 billion. This figure does not include public or private sector integration costs, nor does it take into account possible cost overruns. Any system that supports critical security functions must be robust and resilient to malicious attacks. Because of its size and complexity, the identity system would require security measures at a scale that will result in substantially higher implementation and operational costs than has been estimated. The proposed use of the system for a variety of purposes, and access to it from a large number of private and public sector organisations will require unprecedented attention to security. All identity systems carry consequential dangers as well as potential benefits. Depending on the model used, identity systems may create a range of new and unforeseen problems. These include the failure of systems, unforeseen financial costs, increased security threats and unacceptable imposition on citizens. The success of a national identity system depends on a sensitive, cautious and cooperative approach involving all key stakeholder groups including an independent and rolling risk assessment and a regular review of management practices. We are not confident that these conditions have been satisfied in the development of the Identity Cards Bill. The risk of failure in the current proposals is

therefore magnified to the point where the scheme should be regarded as a potential danger to the public interest and to the legal rights of individuals.

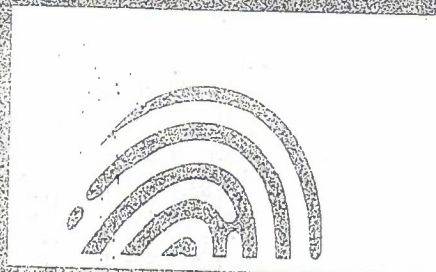
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AADHAR- BILL 2010



DIRECTIONLESS & ILL
CONCEIVED, RAISES
SEVERAL QUESTIONS ON
ITS EFFICACY, DELIVERY!

AADHAR - NIA BILL 2010

**DIRECTIONLESS & ILL CONCEIVED
STANDING COMMITTEE OF PARLIAMENT
ON ACCOUNTS TRASHES IT**

**RAISES QUESTIONS ON ITS
EFFICACY, DELIVERY!!**

BY SOMASEKHAR V.K

We had in our October 2011 issue (Cover page) covered exhaustively the reasons why

'Aadhar' is flawed and why it shouldn't be continued.

The concept of a Unique Identification (UID) scheme was first discussed and worked upon since 2006 when administrative approval for the scheme when administrative approval for the scheme "Unique ID for BPL Families" was given on 3rd March, 2006 by the Department of Information Technology, Ministry of Communications and Information Technology.

The National Identification Authority



of India Bill, 2010 introduced in Rajya Sabha on 3 December, 2010 was referred to the Parliamentary Standing Committee on Finance on 10 December, 2010 headed by Shri Yashwant Sinha as its Chairman.

It was a 31 member committee with members of Parliament from the Lok Sabha and the Rajya Sabha from various political parties as its members.

This committee went into various aspects for almost 1 year and perused documents, met with experts and also collected opinions from the Government on the issue and presented its 48 page report to Lok Sabha on 13 December, 2011 //

The bill itself was introduced only in December 2010 that too after 4 yrs of deliberations and then referred to the



standing committee for its study and report.

This is not a small issue but seriously affecting every Citizen of this country and their concerns but the UPA Government has not found it fit to discuss, deliberate and pass a law but is comfortable with an executive order for its constitution. Left to them this Government would like to continue like the Lok Pal bill that is in cold storage for over 40 yrs and not taken up seriously until Anna Hazare sounded the bugle of a war cry.

Here again the Civil society has not only been vocal but has engaged the UIDAI on a constant barrage of questions and raising serious doubts on its competence, ability to deliver and also its contentions. But they have all been hedged and never answered.

Then one after another the scam was unraveled. From signing contracts with Companies with CIA Links to that of appointment of agencies to collect data, the bloomers started to spill out and the protagonists started to duck under cover.

Ministry of home affairs started to raise their hood and not only substantiated the issues that were found to be real but also disagreed with the methodology being fool proof. Thus a divide like in the case of the 2G scam between Pranab Mukherjee and P

Chidambaram arose. Only that the same people fought in proxy war and with the touted dream project of the Prime Minister itself being in question.

A leading news channel even broadcast the sting operation showing how UID was given without verification and rampant misuse of power by members of Parliament and MLA's. This expose got the cabinet meeting postponed and the PM went into a huddle with some of the key people involved in the UIDAI along with some senior ministers as a damage control. Facts are not denied but firefighting and cover up was being attempted. What transpired really at the closed door meeting may not be

known but the doubts put out linger. Security is compromised that too in an atmosphere of free runs by terrorists in the country without any respite. We blame intelligence failure and everything else but not able to check such grave risks created without any forethought or seriousness.

There are lot of similarities in the 2 episodes of 2G note exchanges of Chidambaram Vs Pranab Mukherjee

leading to much more doubts than clarify them.

It had come to such a pause that more stories of frauds committed on collection of data, media awakening to facts and irresistible to suppress information became rampant. The going got tough and obviously the Government wanted to cover up as it has always done at every such matter that has sprung up. A truce was achieved

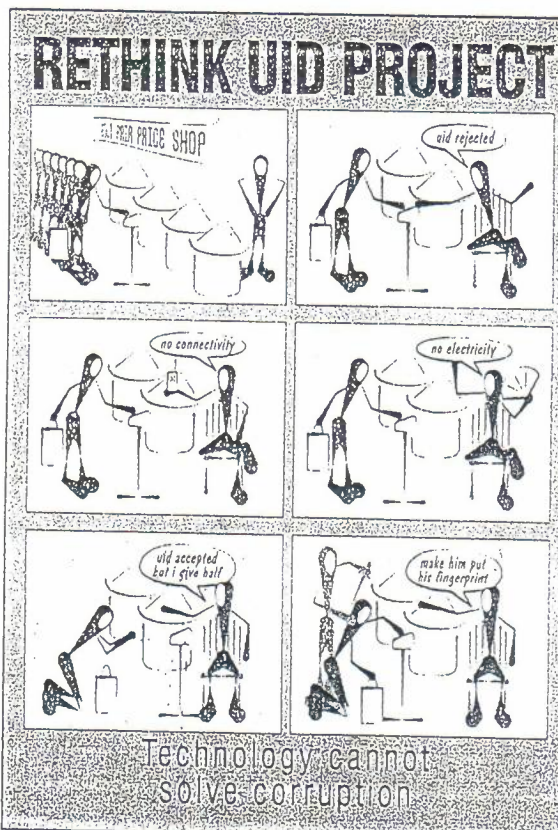
between the UIDAI and the Ministry of Home affairs with P Chidambaram once again the villain of the peace trying to play down all that he had stated in public and that too nothing but truth. He had to compromise once again and agree to 'work together' on a compromise that is looking murkier and complicated, confusing than ever before.

In the case of the Lok Pal Standing committee there was a division and half the members did not agree on the proposal and also gave dissent note. But in this Committee and much to the chagrin of Sri Yeswanth Sinha, he was able to achieve near unanimity on his findings and the report comprehensively dealt even beyond the scope of the NIA Bill 2010 questioning the veracity of claims, contradictions and also nailing it as 'directionless'.

There are several contentious issues dealt in the

report that are serious and has to be addressed yet the scam tainted Government like in all the cases of cover ups has with temerity bulldozed its view and extended the scope beyond 20 million to now cover 60 million in 19 States with a whopping sanction of The UIDAI has been given permission and finances to the tune of an additional 5,791 crore. The NPR will accept the biometric data collected by the UIDAI in those States and continue to collect its own data through the Registrar-General of India in the remaining States.

Meanwhile, the Postal department discontinued the collection of data for not receiving payments from UIDAI.



and the drama that unfolded and thus the compromise also ended in a similar fashion in this case because they wanted to bury the hatchet that is bound to be questioned if not today at a later date when the whole issue triggers an impossible performance that is going to backlash.

Nandan Nilekani and his team have brushed aside all the comments, apprehensions and concerns without answering them and they have also selectively played upon the psyche of the ignorant people with selective strategy of marketing to which he is adept. They have now become very secretive and selective in disseminating information. Thus

Here is the verbatim statements on its findings:

OBSERVATIONS /

RECOMMENDATIONS

1 The Committee have carefully examined the written information furnished to them and heard the views for and against the National Identification Authority of India (NDAI) Bill from various quarters such as the Ministry of Planning, the Unique Identification Authority of India (UIDAI), the National Human Rights Commission (NHRC) and experts. The clearance of the Ministry of Law & Justice for issuing Aadhar numbers, pending passing the Bill by Parliament, on the ground that powers of the Executive are co-extensive with the legislative power of the Government and that the Government is not debarred from exercising its Executive power in the areas which are not regulated by the legislation does not satisfy the Committee.

2 The Committee is constrained to point out that in the instant case, since the law making is underway with the bill being pending; any executive action is as unethical and violative of the Houses of Parliament being in session.

3 The Committee is surprised that while the country is on one hand facing a serious problem of illegal immigrants and infiltration from across the borders, the National Identification Authority of India Bill, 2010 proposes to entitle every resident to obtain an Aadhar number; apart from entitling such other category of individuals as may be notified from time to time. This will, they apprehend, make even illegal immigrants entitled for an Aadhar number. The Committee is unable to understand the rationale of expanding the scheme to persons who are not citizens, as this entails numerous benefits proposed by the Government. The Committee has received a number of suggestions for restricting the scope of the UID scheme only to the citizens and for considering

better options available with the Government by issuing Multi-Purpose National Identity Cards (MNICs) as a more acceptable alternative.

4 The Committee observes that prima facie the issue of unique identification to individuals residing in India and other classes of individuals under the Unique Identification (UID) Scheme is riddled with serious lacunae and concern areas, which have been identified as follows:-

a. The UID scheme has been conceptualized with no

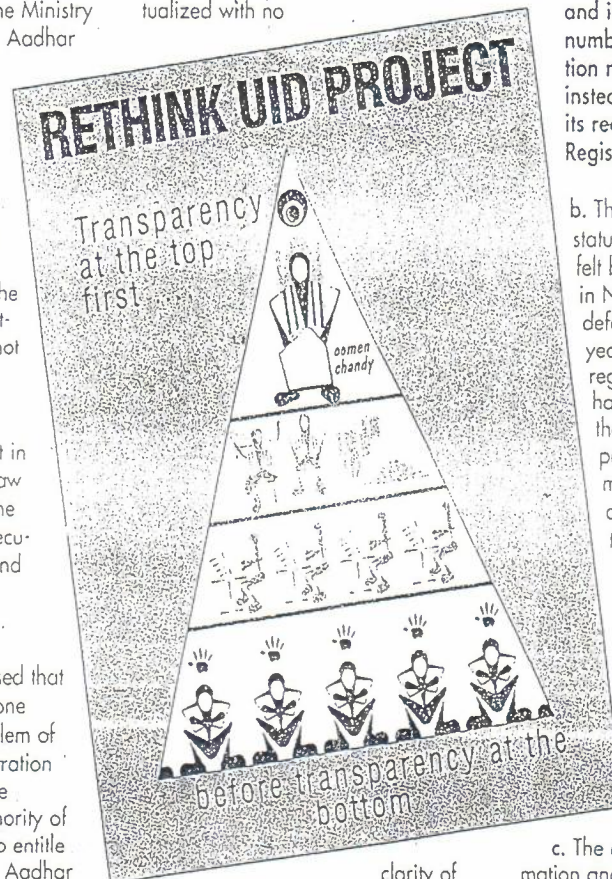
methodology and specifying target for effective completion of the UID scheme, failed to take concrete decision on important issues such as:

- Identifying the focused purpose of the resident identity database;
- Methodology of collection of data;
- Removing the overlapping between the UID scheme and NPR;
- Conferring of statutory authority to the UIDAI since its inception;
- Structure and functioning of the UIDAI;
- Entrusting the collection of data and issue of unique identification number and national identification number to a single authority instead of the present UIDAI and its reconciliation with National Registration Authority;

b. The need for conferring of statutory authority to the UIDAI felt by the Government way back in November, 2008, but was deferred for more than two years for no reason. In this regard, the Ministry of Planning have informed the Committee that till the time Parliament passes the NDAI Bill, crucial matters impinging on security and confidentiality of information will be covered by the relevant laws. The Committee are at a loss to understand as to how the UIDAI, without statutory power, could address key issues concerning their basic functioning and initiate proceedings against the defaulters and penalize them;

c. The collection of biometric information and its linkage with personal information of individuals without amendment to the Citizenship Act, 1955 as well as the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, appears to be beyond the scope of subordinate legislation, which needs to be examined in detail by Parliament;

d. Continuance of various existing forms of identity and the address, even after issue of Aadhar number, would render the claim made by the Ministry



clarity of purpose and leaving many things to be sorted out during the course of its implementation; and is being implemented in a directionless way with a lot of confusion. The scheme which was initially meant for BPL families has been extended for all residents in India and to certain other persons. The Empowered Group of Ministers (EGoM) constituted for the purpose of collating the two schemes namely, the UID and National Population Register (NPR), and to look into the

that Aadhar number is to be used as a general proof of identity and proof of address meaningless;

e. In addition to Aadhar numbers being issued by the UIDAI, the issuance of smart cards containing information of the individuals by the registrars is not only a duplication but also leads to ID fraud as prevalent in some countries; and

f. The full or near full coverage of marginalized sections for issuing Aadhar numbers could not be achieved mainly owing to two reasons viz. relating to them; and (ii) estimated failure of biometrics is expected to be as high as 15% due to a large chunk of population being dependent on manual labour.

5 The Committee regrets to observe that despite the presence of serious difference of opinion within the Government on the UID scheme as illustrated below, the scheme continues to be implemented in an overbearing manner without regard to legalities and other social consequences:-

◆ The Ministry of Finance (Department of Expenditure) have expressed concern that lack of coordination is leading to duplication of efforts and expenditure among at least six agencies collecting information (NPR, MGNREGS, BPL census, UIDAI, RSBY and Bank Smart Cards);

◆ The Ministry of Home Affairs is stated to have raised serious security concern over the efficacy of introducer system, involvement of private agencies in a large scale in the scheme which may become a threat to national

◆ The National Informatics Centre (NIC) have pointed out that the issues relating to privacy and security of UID data could be better handled by storing in a Government data centre;

◆ The Ministry of Planning have expressed reservation over the merits and functioning of the UIDAI; and the necessity of collection of iris image;

◆ Involvement of several nodal appraising agencies which may

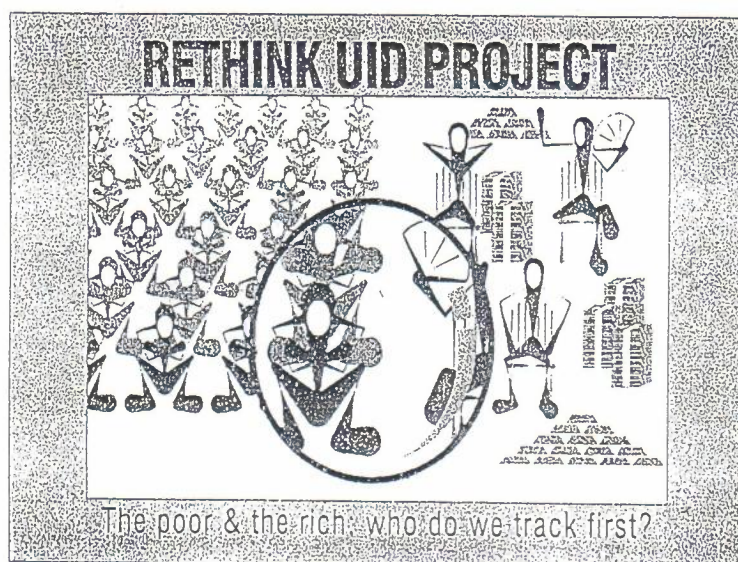
work at cross-purpose; and

◆ Several Government agencies are collecting biometric(s) information in the name of different schemes.

6 The Committee is also unhappy to observe that the UID scheme lacks clarity on many issues such as even the basic purpose of issuing claims that obtaining Aadhar number is voluntary, an apprehension is found to have developed in the minds of people that in future, services / benefits including food entitlements would be denied in case they do not have Aadhar number.

scheme, which the Ministry of Planning have ignored completely. For instance, the United Kingdom shelved its Identity Cards Project for a number of reasons, which included:-

- (a) Huge cost involved and possible cost overruns;
- (b) Too complex;
- (c) Untested, unreliable and unsafe technology;
- (d) Possibility of risk to the safety and security of citizens; and
- (e) Requirement of high standard security measures, which would result



It is also not clear as to whether possession of Aadhar number would be made mandatory in future for availing of benefits and services. Even if the Aadhar number links entitlements to targeted beneficiaries, it may not ensure that beneficiaries have been correctly identified. Thus, the present problem of proper identification would persist. It is also not clear that the UID scheme would continue beyond the coverage of 200 million of the total population, the mandate given to the UIDAI. In case, the Government does not give further mandate, the whole exercise would become futile.

7 Though there are significant differences between the identity system of other countries and the UID scheme, yet there are lessons from the global experience to be learnt before proceeding with the implementation of the UID

in escalating the estimated operational in the current proposals is therefore magnified to the point where the scheme should be regarded as a potential danger to the public interest relevant and applicable to the UID scheme, they should have been seriously considered.

8 The UID scheme facilitates the UIDAI and the registrars to create database of information of people of the country. Considering the huge database size and possibility of misuse of information, the Committee are of the view that enactment of national data protection law, which is at draft stage with the Ministry of Personnel, Public Grievances and Pensions, is a pre-requisite for any law that deals with large scale collection of information from individuals and its linkages across separate databases.

In the absence of data protection legislation, it would be difficult to deal with the issues like access and misuse of personal information, surveillance, profiling, linking and matching of databases and securing confidentiality of information etc.

9 The Committee note that the Ministry of Planning have admitted that

a. No committee has been constituted to study the financial implications of the UID scheme; and

Comparative costs of the Aadhar number and various existing ID documents are also not available. The Committee also notes that Detailed Project Report (DPR) of the UID Scheme has been done much later in April, 2011. The Committee thus strongly disapproves of the hasty manner in which the UID scheme has been approved. Unlike many other schemes / projects, no comprehensive feasibility study, which ought to have been done before approving such an expensive scheme, has been done involving all aspects of the UID scheme including cost-benefit analysis, comparative costs of Aadhar number and various forms of existing identity, financial implications and prevention of identity theft, for example, using hologram enabled ration card to eliminate fake and duplicate beneficiaries.

10 The Committee is afraid that the scheme may end up being dependent on private agencies, despite contractual agreement made by the UIDAI with several private vendors. As a result, the beneficiaries may be forced to pay over and above the charges to be prescribed by the UIDAI for availing of benefits and services, which are now available free of cost.

11 The Committee finds that the scheme is full of uncertainty in technology as the complex scheme is

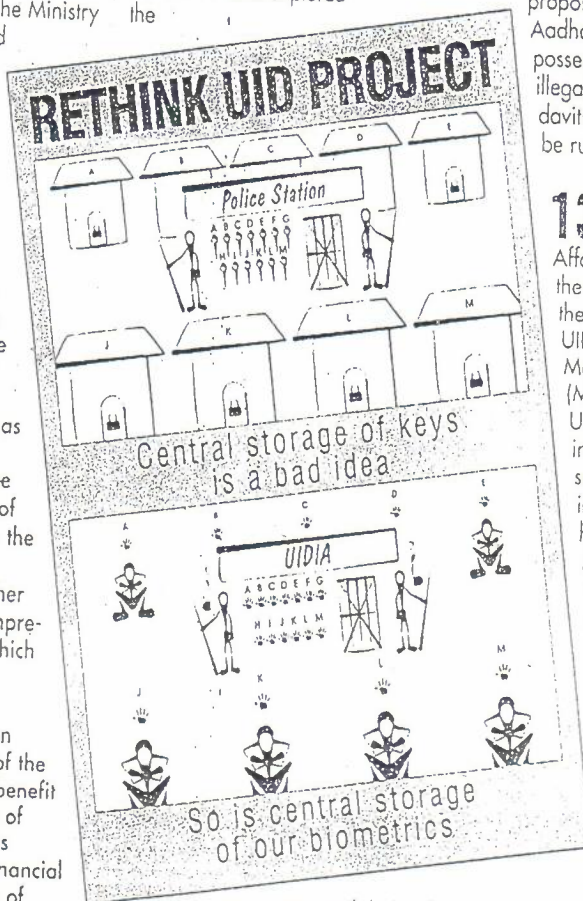
built up on untested, unreliable technology and several assumptions. Further, despite adverse observations of biometrics, the UIDAI is collecting the biometric information. It is also not known as to whether the proof of concept studies and assessment studies undertaken by the UIDAI have explored the

mation etc., it is not sure as to whether complete verification of information of all Aadhar number holders is practically feasible; and whether it would deliver the intended results without compromising national security. As the National Identity Cards to citizens of India are proposed to be issued on the basis of Aadhar numbers, the possibility of possession of Aadhar numbers by illegal residents through false affidavits / introducer system cannot be ruled out.

13 The Committee takes note that the Ministry of Home Affairs have alleged that some of the registrars have not adhered to the laid down procedures under UIDAI which renders the Memoranda of Understanding (MoU) signed between the UIDAI and the registrars meaningless; and it compromises the security and confidentiality of information of Aadhar number holders. Even, according to the latest media reports, controversies between the Ministry of Home Affairs and the UIDAI over issues such as the manner and processes followed by the UIDAI, duplication of efforts between NPR and Aadhar, and security of data still remain unresolved.

14 In view of the aforementioned concerns and apprehensions about the UID scheme, particularly considering the contradictions and ambiguities within the Government on its implementation as well as implications, the Committee categorically conveys their unacceptability of the National Identification Authority of India Bill, 2010 in its present form.

15 The data already collected by the UIDAI may be transferred to the National Population Register (NPR), if the Government so chooses. The Committee would, thus, urge the Government to reconsider and review the UID scheme as also the proposals contained in the Bill in all its ramifications and bring forth a fresh legislation before Parliament.



possibilities of maintaining accuracy to a large level of enrolment of 1.2 billion people. Therefore, considering the possible limitations in applications of technology available now or in the near future, the Committee would believe that it is unlikely that the proposed objectives of the UID scheme could be achieved.

12 The Committee feels that entrusting the responsibility of verification of information of individuals to the registrars to ensure that only genuine residents get enrolled into the system may have far reaching consequences for national security. Given the limitation of any mechanism such as a security audit by an appropriate agency that would be setup for verifying the infor-



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Identity concerns

R. RAMAKUMAR

The Unique Identification number, "symbolic of the new and modern India", is of questionable legality and viability.

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Insurance**

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health insurer. Get
max
coverage@lowest
premiums

KAMAL SINGH/PTI



Prime Minister Manmohan Singh and Chairperson of the Unique Identification Authority of India Nandan M. Nilekani at a UIDAI Council meeting in New Delhi.

"In the Indira years, the slogan was 'garibi hatao'.... In the 1970s and 1980s, people's aspirations had focussed on basic essentials – roti, kapda, aur makaah.... Since the reforms in the 1990s, the emphasis moved to... bijli, sadak and paani. In recent years, as growth has accelerated and access to basic infrastructure has improved further, aspirations among the poor have shifted again.... Today, it's all virtual things – it's about UID number, mobile phone and bank account.... With that, they can access services, benefits and their rights.... We are looking at a post-Aadhaar world."

– Nandan Nilekani

"MODERN" India, it would appear, has finally found the "missing link" in its superpower story. Having ensured that all its "poor" had access to "roti, kapda aur makaan" by the 1980s, and "bijli, sadak, paani" by the 1990s, it is surging ahead to meet the new and rising aspirations of its "poor". The foundations of this surge are being laid with the Unique Identification (UID) number, or

Aadhaar, which is also the key to the three "virtual things". For Prime Minister Manmohan Singh, "Aadhaar... is symbolic of the new and modern India". For Rahul Gandhi, Aadhaar is the key to "bridging the two Indias", where you "take some" from the "India of opportunity" and "put them" into the "India without opportunity".

Business leaders and the pink press are gaga over the spin-offs. According to one analysis, Aadhaar links "private-sector businesses to India's poor in an unprecedented manner"; another is titled: "UID: The Biggest Business Opportunity since Liberalisation"; and yet another quotes the managing director of a software giant thus: "UID gives us a business opportunity to prosper in this digital world".

The total cost of the project is estimated at over Rs.50,000 crore. A business newspaper reveals that "for every rupee of IT spend on the project... around 60 per cent... will go to hardware vendors". One consultancy giant estimated that within five years into that "post-Aadhaar world", India would see a first wave of investments totalling \$10 billion. From then on, "potential" is \$12 billion a year.

There is no other government project that has kicked up such frenzy in recent times. However, in the midst of this frenzy, myriads of questions are begging for answers. While there are people asking these questions, there are also those tired old ways of dismissing them. Brand them as "jholawalas" or "lefties" or "anti-technology guys" or "those who broke computers in the [19]80s". The more lenient of the brandings would be "civil libertarians" or "privacy activists". Whatever they be branded, one thing in common is that none of their questions has received a satisfactory answer yet.

One place to ask questions in a democracy is Parliament; however, about six crore Aadhaar numbers have been issued even before Parliament has taken up the matter for legislative discussion.

Frontline was the first to publish a critical article on UID in 2009, which raised a set of questions to the government ("High-cost, High-risk", August 14, 2009). More than two years later, most of those questions remain unanswered.

The REAL INTENT: SECURITY OR DEVELOPMENT? The Genesis

An important question regarding Aadhaar is how it will be used. Aadhaar is connected closely with the National Population Register (NPR) of the Union Home Ministry. The NPR is a child of the Kargil War. Following the reports of the "Kargil Review Committee" in 2000, and a Group of Ministers in 2001, the National Democratic Alliance (NDA) government decided to register compulsorily all citizens into an NPR and issue each a Multi-purpose National Identity Card (MNIC). Officially, the NPR is aimed at preventing "illegal migration". For this purpose, the Citizenship Act of 1955 was amended and new Citizenship Rules were released in 2003.

As per Rule 7(3) in the 2003 Rules, "It shall be the responsibility of every citizen to register once with the Local Registrar of Citizen Registration and to provide correct individual particulars." Rule 3(3) states that information on every citizen in the NPR should compulsorily have his/her "National Identity Number". Still further, Rule 17 states that "any violation of provisions of rules 5, 7, 8, 10, 11 and 14 shall be punishable with fine which may extend to one thousand rupees".

NPR and Aadhaar

While registration to the NPR was compulsory and a National Identity Number was linked to each name, the 2003 Rules did not approve of linking biometrics with personal information. If we analyse the annual reports of the Home Ministry, the sections on the MNIC pilot project do not refer to biometric data until 2004-05. In 2005-06, the first mention of biometric data appears. The report noted: "Data entry work for all the 30.96 lakh records... and integration

of photographs and finger biometrics of 17.2 lakh... out of 20.6 lakh... has been completed." Just how biometrics got included in the NPR without sanction from the 2003 Rules remains a mystery.

R.ESWARAJ



DOING AN IRIS scan as part of collecting biometric details, at a post office in Mangalore on September 27.

With the introduction of biometrics into the NPR, the Home Ministry required technical expertise. The establishment of the Unique Identification Authority of India (UIDAI) in 2008 was partly to meet this requirement. If doubts remained, Home Minister P. Chidambaram clarified in 2009 that "MNIC has to be issued to every citizen, for which the government has decided to set up a UID authority." The Home Ministry's annual report for 2008-09 went a step ahead and stated: "After the NPR is created, it will engulf the UID database, being far more comprehensive, and will become the mother database for identity purposes."

The Home Ministry's plan was the following. To quote from the Census of India website: "Data collected in the NPR will be subjected to de-duplication by the UIDAI. After de-duplication, the UIDAI will issue a UID Number. This UID Number will be part of the NPR and the NPR Cards will bear this UID Number." "No prizes for guessing that Aadhaar is already compulsory. In the UIDAI parlance, the NPR is a "killer application". A killer application is one that so "leverages Aadhaar" that every citizen is forced to get an Aadhaar number.

When the ownership of a "mother database" of citizens, including their biometrics, lies with the Home Ministry, there are reasons to worry. There is always the problem of "functionality creep", where data collected serves purposes other than its original intent. There are many ways in which the state can use such a database against its own citizens. The database could be used to persecute marginalised sections of the population. The police and the security forces, if allowed access to the biometric database, could use it extensively for regular surveillance and investigative purposes. This can lead to a large number of human rights violations. Given that fingerprint matching is not error-free, such policing may further exacerbate human rights violations. A democratic society has to guard against such possibilities.

Questions of duplication

While the UIDAI was established to supply UID numbers to the NPR, the onus of data collection was with the Registrar General of India (RGI) under the Home Ministry. However, as an initial step, the UIDAI was allowed to enrol 200 million persons. It began this process by signing memorandums of understanding (MoUs) with "registrars", who enrolled people either directly or through other agencies; the RGI was one of these registrars.

First, duplication of resources and work was built into this plan. There was one set of people whose data were collected by the RGI ("Group 1") and another whose data were collected by non-RGI Registrars ("Group 2"). But data for "Group 2" could not be given to the RGI to be added to the NPR; the MoU signed between the RGI and the UIDAI did not allow for this. The MoU allowed

transfer of information only for "Group 1".

135

In other words, within the UIDAI's 200-million persons, duplication and wastage was already built in. Persons in "Group 2" now have to enrol again at an RGI centre. Not surprisingly, officials of the Comptroller and Auditor General (CAG) of India have made a quiet trip to the UIDAI office for an audit.

Secondly, if duplication is allowed to cross the 200 million mark, a major section of the population would have to enrol twice. This is the reason why the Home Ministry is now trying to recapture the responsibilities of enrolment. On its part, the UIDAI wants to continue with the old plan; whether the Cabinet will allow it is not clear yet.

WHITHER PRIVACY?

Another important concern is the project's potential to violate people's right to privacy. In most Western countries, projects to issue ID cards were shelved because of strong privacy concerns and adverse public opinion (see interview with Dr Edgar Whitley on page 29).

Privacy and culture

Is privacy a "Western" concept that does not apply to "eastern" societies like India, where "community-based" life predominates? Such a question is regularly raised in debates on Aadhaar. What this question ignores is that the right to privacy has the status of a shared global value (see A.G. Noorani's article on page 13). While the nature of notions around privacy differs across countries, every country has a temporally dynamic notion of privacy built into its culture. In other words, "an interest in self-governed choice" is not a by-product of "Western individualism".

Martha Nussbaum, the renowned philosopher, has criticised the argument that privacy is a notion without value in India (see "Is Privacy Bad for Women?", Boston Review, April/May, 2000). She writes that if the history of India is any guide, it only shows that "India draws certain concrete lines in different places than does America". She further argues that "if we consider the general meanings of 'privacy' typically acknowledged as most salient in American discussions, India also marks each of the notions as salient, and ascribes value to protecting the concerns that fall under them."

To argue her point out, Nussbaum cites three cases. First, just as in the U.S., Indian "people recognise that certain types of information about oneself are privileged, and that it is bad for outsiders to publicise them without consent." Secondly, she argues that "in India, as in the U.S., there is a deep concern for keeping certain parts of the body, and certain bodily acts, hidden from the sight of others – and also a more general concern that, whatever one is doing, one should not be watched without one's consent." Thirdly, there is a strong "interest in decisional autonomy or liberty in certain areas especially definitive of the person". All these lessons, Nussbaum says, are from "among the most ancient and deeply traditional concerns of both Hindu and Muslim cultures".

It is clear then that privacy can be viewed as a globally valued "right", "entitlement" and "freedom". We can also work within the framework of individual freedoms elaborated by Amartya Sen. In Sen's framework, every freedom can have "intrinsic" and "instrumental" values. In the intrinsic sense, privacy enriches the lives of people in a substantive way and thus is "constitutive" of development. In the instrumental sense, privacy can be seen as contributing to other individual freedoms and socio-economic progress. It is from this standpoint that Sen has argued against consequence-independent absolute rights. Thus, the demand to trade-off one freedom for another (say, the "invasive loss" of privacy for "development") is an untenable demand.

Aadhaar and privacy

It is disturbing then that privacy concerns are not discussed in any document of the government or the UIDAI. On the contrary, discussions around Aadhaar

have involved open calls for sharing personal information with private companies. From 2006 onwards, there was a scheme titled "Unique ID for BPL families", implemented by the Department of Information and Technology. While critics trace the origin of the UIDAI to the MNIC project, the UIDAI itself traces its origin to this scheme. In 2006, a working group of the Planning Commission examined the possibilities of improving upon this scheme and introducing smart cards linked to unique IDs of citizens. The working group report noted that:

"...[U]nique ID could form the fulcrum around which all other smart card applications and e-governance initiatives would revolve. This could also form the basis of a public-private-partnership wherein unique ID-based data can be outsourced to other users, who would, in turn, build up their smart card-based applications.... In the context of the unique ID, part of this database could be shared with even purely private smart card initiatives such as private banking/financial services on a pay-as-you-use principle...."

The callousness that this report displays in sharing personal information with private companies is astonishing. In India, one major threat to privacy arises from here: the promotion of private players in the provision of social services, such as education, insurance and health (see Mohan Rao's article on page 19). With the privatisation of social services, personal data would be transformed into commodities in the market for Aadhaar numbers. In such a context, promises to introduce privacy laws become weak tools to gain the trust of citizens.

IS BIOMETRIC TECHNOLOGY INFALLIBLE?

Among the technological features of Aadhaar, the collection of biometrics is most significant. Apart from biometrics, there is no systemic check to prevent "identity theft". While there is agreement among biometric and legal experts regarding critical drawbacks of biometrics in proving identity beyond doubt, the Aadhaar project demonstrates extraordinary levels of faith in the infallibility of biometrics.

First, no accurate information exists on whether errors of fingerprint matching are negligible or non-existent. A small percentage of users would always be either falsely matched or not matched at all.

Secondly, a report from 4G Identity Solutions, a supplier and consultant for the UIDAI, recognises that people above 60 years and children below 12 years have difficulties in enrolling with fingerprints. Fingerprints of manual labourers are likely to be broken or eroded, apart from accidental damages to fingers from burns, chemicals, and other agents. Owing to such bad or noisy data, "the failure to enrol is as high as 15 per cent" in India; this involves a minimum of 180 million persons. If fingerprint readers are installed at MGNREGS work sites and PDS outlets, and employment or purchases are made contingent on authentication, about 180 million persons will be excluded from accessing these schemes.

Biometric Standards Committee report

Many of the misgivings with regard to biometrics were reaffirmed by the UIDAI's Biometrics Standards Committee. This committee conducted a sample study of 25,000 persons. Even in such a small sample, 2 to 5 per cent of the respondents did not have "biometric records". Error rates increased by 2 to 3 per cent when the software was "untuned" to local conditions. The report also noted that sensors would not usually capture fingerprints accurately when women apply mehendi on their fingers.

NAGARA GOPAL



CAPTURING FINGERPRINTS AT a special booth set up at Patancheru in Medak district, Andhra Pradesh.

For iris images, the report did not provide estimates of error because of the "absence of empirical Indian data". It recommended that iris images should be used only "if they [UIDAI] feel it is required". The Proof of Concept (PoC) study of the UIDAI also does not inspire confidence regarding the potential of biometrics to work in large populations (see R. Ramachandran's article on page 25).

However, despite adverse technical reports, the UIDAI decided to proceed with the collection of fingerprints and iris images for the entire population. Given that the total project cost is over Rs.50,000 crore, it is but natural that hard questions are asked on these spending decisions.

"REFORMS" IN THE SOCIAL SECTOR?

"We have to rework the system. If we simply introduce UID without re-engineering the system, it wouldn't work," said Montek Singh Ahluwalia, Deputy Chairman of the Planning Commission, in September. He is right. Aadhaar would drastically reform the architecture of welfare provisions and qualitatively restructure the state's role in the social sector (see articles on PDS (page 16), MGNREGS (page 122) and health (page 19)). This policy has two elements, both of which are constitutive of neoliberal policy in India.

The first is a shift from universalism to targeting. Aadhaar is not intended to expand social service provisions. Its aim is to keep benefits restricted to "targeted" sections, ensure targeting with precision, and thus limit the government's fiscal commitments. As Manmohan Singh stated in July 2010: "To reduce our fiscal deficit in the coming years, we must [be]... reducing the scale of untargeted subsidies. The operationalisation of the Unique Identification Number Scheme... provides an opportunity to target subsidies effectively."

The second is a shift from direct provision to indirect provision of social and economic services. Here, existing institutions of direct intervention are dismantled and replaced by new institutions of indirect provision. Aadhaar, as claimed, is not a tool of empowerment; it is actually an alibi for the state to leave the citizen unmarked in the market for social services.

Aadhaar as sufficient identity proof?

A key premise for Aadhaar is that inability to prove identity is a barrier that prevents the poor from accessing services. It is true that the lack of identity prevents a large number of poor from, say, getting a ration card or opening a bank account. Will Aadhaar be sufficient proof of identity to access these services? Will Aadhaar do away with the need to present other documents for proving identity? In all probability, the answers are in the negative.

For instance, the UIDAI claims that the Reserve Bank of India (RBI) has made Aadhaar a valid identity proof for opening a bank account. It also claims that this step would lead to rapid growth of financial inclusion. How accurate are

these two claims?

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Indeed, through a gazette in November 2010, the government added the letter from the UIDAI, with the Aadhaar number, to the list of documents that may be accepted as proof of identification. However, in a circular, dated September 28, 2011, the RBI clarified: "It is reiterated that while opening accounts based on Aadhaar also, banks must satisfy themselves about the current address of the customer by obtaining required proof of the same as per extant instructions." In other words, even with an Aadhaar number, banks would continue to demand other "valid" documents.

Aadhaar for financial exclusion?

Despite the phenomenal spread of public banking in rural areas after 1969, a large section of the Indian people remain "unbanked". One of the reasons is that many of the successes achieved between 1969 and 1991 were reversed by the financial liberalisation policies after 1991. For instance, a large number of rural bank branches were closed down in the 1990s and early 2000s. In any meaningful financial inclusion policy, opening of new rural bank branches has to be a priority. However, the government has other plans. For the government, the earlier "brick-and-mortar" model of rural banking is passé. The preferred option is to encourage "branchless banking", and this is where Aadhaar becomes important.

In a working paper on financial inclusion, the UIDAI notes that taking banking to rural areas is an "expensive proposition". Hence, opening rural branches becomes a "social responsibility rather than a business opportunity". It suggests that Aadhaar can usher in "an era of ubiquitous branchless banking". Instead of opening rural branches, the bank may simply appoint "business correspondents" (B.Cs.), who, with the help of hand-held biometric devices, perform banking functions. To promote the B.C. model, the RBI has already permitted the appointment of "for-profit companies" as B.Cs. The size of the "B.C. market" was recently estimated at Rs.3,000 crore. Just by routing MGNREGS wages, the B.Cs are likely to earn up to Rs.600 crore a year as commission.

The B.C. model has already triggered adverse outcomes in rural areas. On March 18, 2011, an internal circular of the State Bank of India noted that B.Cs were "found to indulge in malpractices, such as asking for unauthorised money, over and above the bank's approved rates of charges from the customers". It noted that "gullible customers" are being "exploited", posing "serious risk" to the bank's reputation. During discussions with a leading bank union, I was told that B.Cs regularly extracted Rs.100 to 150 per gold loan in many south Indian districts. One newspaper recently quoted a B.C. employee in Punjab thus: "75 per cent of B.C. agents are village sarpanchs or their kin."

To conclude, a project of the size and cost of Aadhaar should not be pursued without wider discussions among the public and in Parliament. Such projects should inspire public trust and confidence. However, the undue haste displayed by the proponents of the project raises many questions. The sad part of the story is that there are no satisfactory answers.

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IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY ORIGINAL JURISDICTION

I.A. No. of 2012
IN
PIL/ WRIT PETITION (CIVIL) NO. OF 2012

IN THE MATTER OF: -

Justice K.S. Puttaswamy (Retd.) & Anr.Petitioners

Versus

Union of India & Ors. ...Respondents

AN APPLICATION FOR INTERIM RELIEF/STAY

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE SUPREME COURT OF
INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWTH: -

1. That the instant Public Interest Petition is being filed under Article 32 of the Constitution of India by the petitioner herein challenging the constitutional validity of the notification dated 28.01.2009, whereby the Government of India had constituted the Unique Identification Authority of

India during the pendency of "National Identification Authority of India Bill, 2010" in the parliament.

2. That due to the constitution and issuance of the aadhar cards in pursuance of the said notification the fundamental rights of the innumerable citizens of India namely Right to Privacy falling under Article 21 of the Constitution of India are adversely affected by the Executive action of the Central Government proceeding to implement an executive order dated 28.01.2009 while the Bill namely "National Identification Authority of India Bill, 2010 [hereafter Shortly referred to as the Bill] by issuing Aadhar numbers to both citizens as also illegal immigrants presently illegally residing in the Country, though the Bill has already been introduced in the Rajya Sabha on 03.12.2010 and the matter was referred to the Standing Committee, Finance and the said committee by overwhelming majority has rejected the Bill by its decision dated 11.12.2011.

3. That ADHAAR is being issued without any proper verification by the private companies whose main object is to make money by issuing more cards. They are issuing cards even on the basis of an affidavit. After the activity is legislated, it will be difficult to remove/re-verify such

database, which will cause serious security issues for the country.

4. That in the circumstances, it is just and expedient that the implementation of the impugned illegal notification dated 28.01.2009 issued by the Government of India while the "National Identification Authority of India Bill, 2010 was pending before the Parliament, be stayed forthwith in the interest of justice lest aadhar card is issued to the illegal immigrants in India without verifying them and they start claiming the rights of citizenship in India.

PRAYER

The Petitioner respectfully prays that this Hon'ble Court may be pleased to:

- (A) Pass an ex-parte order staying the operation and implementation of notification dated 28.01.2009 issued by the Secretary to the Government of India Constituting the Unique Identification Authority of India which tantamount to implementing the provisions of the National Identification Authority of India Bill, 2010 pending before the Parliament until and unless the said

Bill is considered and passed by the parliament and becomes an Act of parliament.

(B) Pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS AS THE PETITIONER IS DUTY BOUND SHALL EVER PRAY.

NEW DELHI

DRAWN AND FILED BY

DRAWN ON: 17.10.2012

FILED ON: 18.10.2012

[ANISH KUMAR GUPTA]

Advocate for the Petitioner